Supreme Court, U. S.
FILED
AUG - 4 1980
MICHAEL RODAK, JR., CLERK

NO. 80-250

PETITION FOR CERTIORARI

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

VIRGINIA CRAMER, PETITIONER-DEFENDANT IN WRONGFUL FORECLOSURE ACTION,

PETITIONER

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, JOINTLY, SEVERALLY AND INDIVIDUALLY, PLAINTIFFS IN WRONGFUL FORECLOSURE ACTION,

McCLINTOCK DONOVAN CARSON & ROACH AND JAMES I. McCLINTOCK, MICHAEL DOELLE AND WILLIAM P. THORPE, ATTORNEYS AT LAW, JOINTLY, SEVERALLY AND INDIVIDUALLY,

ABEL SELBURN, ALLEN COUNARD AND WILLIAM R. McFADDEN, ATTORNEYS AT LAW, JOINTLY, SEVERALLY, AND INDIVIDUALLY,

FEDERAL HOME LOAN BANK BOARD, DIRECTOR AND/OR OFFICIAL AND/OR OFFICER IN CHARGE,

MICHIGAN SUPREME COURT MEMBERS, JUSTICES MARY S. COLEMAN, THOMAS GILES KAVANAGH, CHARLES L. LEVIN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., and G. MENNEN WILLIAMS, JOINTLY, SEVERALLY AND INDIVIDUALLY,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ~~AND TO THE MICHIGAN SUPREME COURT~~

Virginia Cramer, pro se Petitioner
27314 Clairview, Dearborn Heights, Mich. 48127
Telephone: (313) 278-7286

PETITIONER'S APPENDIX VOLUME II

Filed November 16, 1979 No. 9-72789
U. S. District Court

EXHIBITS (attached hereto)

A - "Order Dissolving Temporary Restraining Order" dated September 27, 1968

B - Affidavit of John C. Denyer (for Metropolitan Federal Savings and Loan Association

C - Notice of Adjournment and Notice of Mortgage Sale

D - Mortgage (promissory) Note

E - Sheriff's Bidding Statement of Sheriff's Sale on October 1, 1968

G - Mortgage Covenant and Agreement

H - Letter dated May 6, 1968, re: Mortgage payment credited on April 30, 1968

J - Sheriff's Indenture on Mortgage foreclosure

K - Metropolitan Memo as of September 6, 1968

EXHIBIT A

State of Michigan, In the Circuit Court for the County of Wayne - No. 115 792

Virginia Cramer, Plaintiff vs Metropolitan Federal Savings and Loan Association, a United States corporation, et al.

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER

At a session of said Court held in the Court Room in the City-County Building in the City of Detroit, on the day of September 27, 1968.

PRESENT: The Honorable Thomas J. Murphy, Circuit Judge

This matter having come on to be heard on Plaintiff's Motion for Order to Show Cause why a preliminary injunction should not issue, the Court having previously entered a Temporary Restraining Order in this matter, and the Court having examined the pleadings which have been filed, and the Court having heard testimony and examined the Exhibits which have been filed and heard oral argument by the attorneys representing both parties, and the Court having determined that Plaintiff is in default on her Mortgage, and the Court being fuly (sic) advised in the premises, now therefore,

IT IS HEREBY ORDERED AND ADJUDGED that the Temporary Restraining Order previously entered by the Court in this matter restraining the Def endants from proceeding with foreclosure on the following described property:

East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 of Part of the SW 1/4 of Sec. 6, T2SR10E, Dearborn Township WCM as recorded in L80 P2 Wayne County Records

be and the same hereby is dissolved, set aside and held for naught, and the Defendants are hereby permitted to proceed with their foreclosure action on the above described property.

Thomas J. Murphy
Circuit Judge

State of Michigan, In the Circuit Court for the County of Wayne, No. 115 792

Virginia Cramer, Plaintiff vs. Metropolitan Federal Savings and Loan Association, a United States corporation, et al

ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE, WITH TEMPORARY RESTRAINING ORDER - August 12, 1968

The complaint of the plaintiff in the above entitled action, praying a preliminary order of injunction therein, together with a temporary restraining order until such time as it may be determined whether said preliminary order of injunction should issue, having been considered by the court, and the court being fully informed in the premises,

IT IS ORDERED that the defendants show cause before this court on Friday, August 16, 1968, at 11:00 A.M. O'clock why a preliminary order of injunction should not be issued as prayed in said complaint.

IT IS FURTHER ORDERED that a certified copy of said complaint and of this order be served on defendants at least four (4) days before the time fixed for showing cause, and that proof of such service be made.

IT IS FURTHER ORDERED that IN THE MEANWHILE AND UNTIL THE FURTHER ORDER OF THIS COURT, the said defendants, his agents, employees and attorneys, be and they hereby are restrained and enjoined from pursuing a mortgage sale and/or foreclosure action on property described as:

East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 of Part of the SW 1/4 of Sec. 6, T2SR10E, Dearborn Township WCM as recorded

in L80 P2 Wayne County Records,

and also known as 27314 Clairview Drive, Dearborn Heights, Wayne County, Michigan.

Thomas J. Murphy
Circuit Court Judge

EXHIBIT B
State of Michigan, In the Circuit Court for the County of Wayne - No. 115 792

Virginia Cramer, Plaintiff vs Metropolitan Federal Savings and Loan Association, a United States corporation, et al

AFFIDAVIT OF JOHN C. DENYER

STATE OF MICHIGAN)
) SS.
COUNTY OF WAYNE)

JOHN C. DENYER, being duly sworn, deposes and says as follows:

1. That he is Assistant Vice-President and Loan Servicing Manager of Metropolitan Federal Savings and Loan Association, Defendant in the above matter.

2. That in this connection he has been personally and primarily responsible for handling this Mortgage loan from and after the time when the Mortgage was executed.

3. That in this connection he has examined all of the transactions which have taken place in this loan from the time when it was made.

4. That the amounts which Metropolitan Federal Savings and Loan Association is requiring from the Plaintiff as payments into her escrow fund have been correctly

computed by means of a formula which is accepted and used by all other lending institutions in this country.

5. That every payment which has been made out of the funds in Plaintiff's escrow account has been proper and correct.

6. That no penalty has ever been assessed against Plaintiff's escrow account for the late payment of any property tax on this property, but rather any such penalties that have been incurred have been paid by the Defendant.

7. That the title to and the insurance on this property have never been placed in jeopardy by anything which this Defendant has done or failed to do.

8. That the Defendant has requested of the Plaintiff that she make certain increased and additional payments into her escrow fund in order to cover the cost of increased property taxes on this property, and that the Plaintiff has failed and refused to do so.

9. That the Defendant has at all times attempted to co-operate with the Plaintiff and to furnish the Plaintiff with all such information and records as she required in order to enable her to understand the necessity for the increased payments into her escrow fund.

10. That attached hereto and made a part hereof as an exhibit are the year end statements for this mortgage loan showing all receipts and disbursements from the escrow account.

Further deponent saith not.

/s/ John C. Denyer

Subscribed and sworn to before me this 22nd day of August, 1968. Notary Public, Wayne County, Michigan, Betty G. Bell.

EXHIBIT C

NOTICE OF ADJOURNMENT L116503 PA 41

Notice of hereby given that the MORTGAGE FORECLOSURE SALE of which notice hereby attached, is hereby, for reasonable cause, adjourned to Oct. 1st, 1968 at 12 O'clock noon at the same place as set forth in the attached notice.

/s/ Roman S. Gribbs
Sheriff, Wayne County, Mich.

By: /s/ Casimir M. Senkowski, Deputy

I, Casimir M. Senkowski, Deputy Sheriff, do hereby certify that at 12 o"clock noon on Sept. 24th, 1968, I adjourned the Mortgage Foreclosure Sale of which notice is hereby attached, to 12 noon, on October 1st, 1968, at the same place, by posting the above notice of adjournment on the Bulletin Board at the Jefferson Avenue entrance to the City-County Building, Detroit, Michigan.

/s/ Casimir M. Senkowski, Deputy Sheriff, Wayne County, Michigan.

McCLINTOCK, FULTON, DONOVAN & WATERMAN, Attys., 2150 Guardian Bldg., Detroit, Michigan 48226

No. 01-04-6326

NOTICE OF MOR TGAGE SALE- Default having been made in the conditions of a certain mortgage made by VIRGINIA CRAMER to METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States Corporation dated the 29th day of July, 1963, and recorded in the office of the Register of Deeds for the County of Wayne and State of Michigan, on the 13th day of August, 1963, in Liber 15124, of Wayne

County Records, on page 270, on which mortgage there is claimed to be due at the date of this notice, the sum of TWELVE THOUSAND FIVE HUNDRED NINETEEN AND 37/100 ($12,519.37) DOLLARS, and an attorney's fee as provided for in said mortgage, and no suit or proceedings at law having been instituted to recover the moneys secured by said mortgage, or any part thereof,

NOTICE IS HEREBY GIVEN, that by virtue of the power of sale contained in said mortgage, and the statute in such case made and provided, on TUESDAY, THE 20TH DAY OF AUGUST, 1968, at twelve o'clock noon, Local Time, the undersigned will, at the Southerly or Jefferson Avenue entrance to the City-County Building, in the City of Detroit, Michigan, that being the place where the Circuit Court for the County of Wayne is held, sell at public auction, the premises described in said mortgage, or so much thereof as may be necessary to pay the amount then due on said mortgage, including legal costs and attorney's fees, and taxes or insurance that the undersigned may pay on or prior to the date of said sale, and interest at 7 per cent per annum thereon, which said premises so to be sold are situated in the City of Dearborn Heights, County of Wayne, Michigan, and are described as:

East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 Of Part Of The SW 1/4 Of Sec. 6, T2SR10E, Dearborn Township WCM As Recorded in L80 P2 Wayne County Records.

The redemption period as determined under Stat. Ann. 27A.3240 is one year from the time of such sale.

Dated May 23, 1968

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation,
Mortgagee

McCLINTOCK, FULTON, DONOVAN & WATERMAN,
Attorneys for Mortgagee, 2150 Guardian Bldg.,
Detroit, Michigan 48226

EXHIBIT D

MORTGAGE NOTE - Loan No. 6326-MG
METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION

$16,500.00 Detroit, Michigan, July 29,196

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise(s) to pay Metropolitan Federal Savings & Loan Association, or order, at its office in the City of Detroit, Michigan, the principal sum of Sixteen Thousand Five Hundred and No/100 Dollars ($16,500.00) with interest from date on any part thereof at any time unpaid at the rate of 5 & 3/4 per centum (Five & 3/4%) per annum while there is no default hereunder, or under the mortgage securing this note, and at the rate of seven per centum (7%) per annum during the period of any such default, as follows:

One Hundred Three and 81/100 Dollars ($103.8 on the 15th day of September, 1963, and a li sum on the 15th day of each calendar month thereafter until the entire indebtedness secured hereby has been paid in full.

In the event of default in any promise made in this note, or in the mortgage securing it, the holder of this note and said mortgage may, without notice, at its option declare the entire indebtedness evidenced and secured thereby due and payable, then or thereafter, as said holder may elect, regardless of the date of maturity.

Protest, presentment, demand and notice of non-payment are hereby waived by every signor or endorser hereof.

The monthly payments herein provided for shall be applied first upon interest and the remainder upon principal.

Privilege is reserved to prepay, without premium or fee, the indebtedness in whole, or in an amount equal to one or more monthly payments on the principal that are next due on this note, on the 15th day of any month prior to maturity, provided that the monthly payment due on the said 15th day of the month shall have been paid.

At its option, in lieu of increasing the rate of interest as above provided during the period of any default, the Association may collect a "late Charge" not to exceed an amount equal to four per centum (4%) of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments.

/s/ Virginia Cramer (L.S.)

This is to certify that this is the note described in and secured by mortgage of even date herewith and in the same principal amount as herein stated, and secured by real estate situated in Wayne County, State of Michigan.

Dated July 29, 1963 /s/ Edward J. Gilroy
Notary Public

EXHIBIT E

MC CLINTOCK, FULTON, DONOVAN & WATERMAN
2150 Guardian Building Detroit, Michigan 48226

BIDDING STATEMENT FOR SHERIFF'S SALE

Loan No: 01-04-6326
Bidder: Metropolitan Federal Savings and Loan Association
Mortgagors: Virginia Cramer
Type of Loan: V.A. F.H.A. Conventional XX

Principal balance	$12,041.91
Less (Plus) escrow balance (overdraft)	-2.82
Net balance	$12,039.09
Interest to date of notice of sale, ~~excluding escrow~~, at 7%, 5-15-68 to 5-23-68 (___ months, 8 days~~,~~ at $2.34 per day) (sic, 5-3/4% - $2.34 per day)	19.73
Interest from date of notice of sale to date of ~~sale~~, excluding escrow, at 7%, 5-23-68 to 10-1-68 4 months 8 days, at $2.419 per day)	299.64

Other charges:

Late Charges (if applicable):

Cost of Foreclosure:

Foreclosure report	$
Posting fee	8.00
Recording fee	11.00
Attorney's fee	75.00
Sheriff's fee	16.00
Publication costs	72.00
Other	
Revenue stamps	14.30
Total Costs	$196.30

Advances, if any:

_____ tax paid on _____ Plus interest at _____% to date of sale ____ months, ____ days at $_____)

_____ insurance premium paid _____ Plus interest at _____% to date of sale _____ months, _____ days at $_____)

Total advances and interest none

Total Due At Date of Sale $12,611.46

UPSET PRICE $_____

EXHIBIT G

THIS MORTGAGE, made this 29th day of July, 1963 between Virginia Cramer of the City of Detroit, County of Wayne, Michigan, mortgagor, and METROPOLITAN FEDERAL SAVINGS AND LOAN ASOCIATION, a corporation existing under the Home Owner's Loan Act of 1933 of the United States of America, Mortgagee:

WITNESSETH: That mortgagor, for and in consideration of the sum of Sixteen Thousand Five Hundred and No/100 dollars ($16,500.00), the receipt whereof is hereby acknowledged, and for the purpose of securing the re-paymant of said sum, with interest, as hereinafter provided, and any additional sums which mortgagor (jointly or severally, if more than one joins herein) may now or hereafter owe mortgagee, for which this mortgage shall be a continuing security, and of securing the performance of the covenants and conditions hereafter contained, hereby mortgages and warrants unto mortgagee the premises situated in the City of Dearborn Heights, County of Wayne, Michigan, described as follows:

East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 Of Part Of The SW 1/4 of Sec. 6, T2SR10E, Dearborn Township WCM As Recorded In L80 P2 Wayne County Records.

Recorded: Aug 13, 1963 at
10:05 O'clock AM
BERNARD J. YOUNGBLOOD,
Register of Deeds
Wayne County 26, Michigan

together with all easements and rights of way now or hereafter used in connection therewith and all fixtures (which shall include all articles that are ever furnished by a landlord in letting or operating an

unfurnished building which are now or shall hereafter be attached to said premises in any manner).

Mortgagor covenants and agrees:

1. To pay to mortgagee at its office in the City of Detroit, Michigan, the principal sum of Sixteen Thousand Five Hundred and No/100 dollars, ($16,500.00), with interest thereon, according to the terms of a promissory note bearing even date herewith executed by mortgagor to mortgagee, which matures on the 15th day of August 1988, and to pay when due any additional sums which mortgagor may now or hereafter owe mortgagee, as aforesaid.

2. In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments levied or to be levied against said premises, that will next become due, an installment of the premium or premiums that will next become due to renew the insurance on said premises (as hereinafter provided) and, if any life insurance is payable or assigned to mortgagee as additional security for said indebtedness, an installment of the premium or premiums that will next become due thereon. The said installments shall be equal, respectively, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be held by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single

payment. If the sums so deposited shall not be sufficient to pay the taxes, assessments and premiums when the same become due, mortgagor agrees to forthwith pay to mortgagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefor, the excess shall be credited upon principal.

3, To keep all insurable property covered hereby insured against loss by fire and such other hazards as may be specified by mortgagee from time to time, in such amounts and for such periods as may be required by mortgagee, and to pay when due all premiums on any such insurance in the manner above provided. All insurance shall be carried in companies approved by mortgagee and the policies and renewals thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to mortgagee. Each insurance company concerned is hereby directed to make payment for such loss to mortgagee only, and the insurance proceeds, or any part thereof, may be applied by it upon any indebtedness secured hereby or to the restoration or repair of the property damaged, at its option, and any surplus shall be paid to mortgagor.

4. To pay when due all taxes, assessments and other charges which are now or shall hereafter be a lien against said premises, or any part thereof, and for which provision has not been made hereinbefore.

5. To keep all property covered hereby in good repair and condition, to comply promptly with all laws, ordinances, regulations or requirements of any governmental authority applicable thereto, and to abstain from the commission of waste.

6. Should any default be made in the covenants or conditions hereof, mortgagee may, without demand or notice, pay any taxes, assessments, premiums or liens required to be paid by mortgagor, make repairs, effect any insurance provided for herein, cause the abstract of title and tax histories of said premises to be certified to date or procure new abstracts of title and tax histories in case none were furnished to it and procure title reports covering said premises, and the sums paid for any one or all of said purposes shall from the time of the payment thereof be due, with interest thereon at the rate of seven per centum (7%) per annum, and shall constitute a further lien upon said premises under this mortgage. In the event of foreclosure the abstract or abstracts of title shall become the property of mortgagee.

7. The failure of mortgagor to pay any taxes or assessments levied against said premises, or any insurance premiums upon policies of insurance covering said premises, in accordance with the terms hereof, shall constitute waste.

8. In the event of default in the payment of said indebtedness, or any part thereof, or in the performance of any of the covenants or conditions hereof, mortgagee may, without notice, at its option, declare the entire indebtedness secured hereby due, then or thereafter, as it may elect, regardless of the date of maturity and is hereby authorized and empowered to sell or cause to be sold said premises, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder, and all costs and charges of the sale (including the attorneys' fee provided by statute), rendering any surplus moneys to mortgagor. The commencement of proceedings to foreclose this mortgage in any manner authorized by law

shall be deemed an exercise of the above option.

9. The covenants and conditions hereof shall bind, and the benefits and advantages thereof shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, this mortgage has been signed and sealed by mortgagor.

Signed, sealed and delivered
in the presence of:

/s/ Frank E. Fike /s/ Virginia Cramer (L.S.)

/s/ Edward J. Gilroy

STATE OF MICHIGAN)
} SS.
COUNTY OF WAYNE)

On this 29th day of July, 1963, before me personally appeared Virginia Cramer to me known to be the persons described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

My commission expires: 3-12-66

/s/ Edward J. Gilroy
Notary Public, Wayne
County, Michigan

STATE OF MICHIGAN)
} SS
COUNTY OF

On this _____ day of _____, 19 ___ before me appeared _____ and _____ to me personally known, who, being by me (severally and) duly

sworn did say that he is (they are respectively) _____ and _____ of _____ (and that the seal affixed to said instrument is the corporate seal of said corporation) and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of said Directors; and the said officer(s) acknowledged the said instrument to be the free act and deed of said corporation.

My Commission expires _____ 19 __

_____

Notary Public _____ County, Michigan

EXHIBIT H

METROPOLITAN FEDERAL SAVINGS
19830 West Seven Mile at Evergreen - Detroit, Michigan 48219 - Phone 537-3400

May 6, 1968

Virginia Cramer
27314 Clairview
Dearborn Heights, Michigan

Re: 01-03-6326 (sic)

Dear Miss Cramer:
We received a mortgage payment from you on April 30, 1968. It was credited to your account in the following matter: (sic)

Mortgage Payment:	$186.00
Additional Principal Payment	10.17

Very truly yours,

/s/ John C. Denyer
Loan Servicing Manager

JCD:lk

EXHIBIT J

F324199 Li 16503 PA 36

THIS INDENTURE Made the 1st day of October - in the year one thousand nine hundred sixty-eight

BETWEEN Louis W. Anschultz Deputy Sheriff, in and for the County of Wayne in the State - of Michigan, Grantor, and Metropolitan Federal Savings and Loan Association, a United States corporation,

hereinafter referred to as the Grantee.

WITNESSETH, That Virginia Cramer executed and delivered a certain MORTGAGE to- Metropolitan Federal Savings and Loan Association, a United States corporation, - which was recorded in the office of the Register of Deeds for the County of Wayne in Liber 15124 of Wayne County Records on page 270

State of MICHIGAN Dept. of Taxation	Real Estate Transfer Tax Oct. 2'68 P.B. 10543 14.30

which said mortgage contained a power of sale, which has become operative by reason of a default in the covenants of said mortgage, and, by virtue of said power of sale, and in pursuance of the statute in such case made and provided, no proceedings at law having been instituted to recover the debt secured by said mortgage or any part thereof, a notice was published, and a copy thereof posted in a conspicuous place upon the mortgaged premises, that the premises described in said notice would be sold on the 20th day of August in the year one thousand nine hundred sixty-eight at the Southerly or Jefferson Avenue entrance to the City-County Building in the City of Detroit, Michigan, that being the place of holding the Circuit Court in Wayne

County, where the premises are situated, and which sale was adjourned from week to week to October 1, 1968, all as appears from the affidavits and certificates hereto attached, and, in pursuance of said notice I did on the 1st day of October—in the year one thousand nine hundred sixty-eight at 12 O'clock noon of said day expose for sale, at Public Vendue, the lands and tenements described in said notice, and at such sale—did strike off and sell the lands and tenements to the Grantee for the sum of:
TWELVE THOUSAND SIX HUNDRED ELEVEN AND 46/100 ($12,611.46) DOLLARS
being the highest bid therefor and Grantee being the highest bidder, which premises so sold are situated in the City of Dearborn Heights, County of Wayne, State of Michigan and described as:

East 33 feet of Lot—5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 of Part of The SW 1/4 of Sec. 6, T2SR10E, Dearborn Township WCM As Recorded In L80 P2 Wayne County Records.

Recorded Oct 2, 1968 at 2:40 o'clock PM BERNARD J. YOUNGBLOOD, Register of Deeds Wayne County, Michigan 48226

Now, this Indenture Witnesseth, That I, the Deputy Sheriff aforesaid, by virtue of the power of sale in said mortgage contained, and in pursuance of the statute in such case made and provided, and in consideration of the said sum of money so paid as aforesaid, have granted, conveyed, bargained and sold, and by this deed to grant, convey, bargain and sell unto Grantee and to the heirs, successors and assigns of Grantee, — forever, all said lands and tenements hereinbefore described, with the appurtenances and all the estate, right, title and interest

which the said Mortgagors had in said lands and tenements, and every part thereof, on the 29th day of July in the year one thousand nine hundred Sixty-three, that being the date of said mortgage; and at any time thereafter, to Have and to Hold said lands and tenements and every part thereof to Grantee and to the heirs, successors and assigns of Grantee forever.

Signed, Sealed and Delivered, the day and year first above written.

In Presence of

/s/ Louis W. Anschultz
Deputy Sheriff in and for the County of Wayne

/s/ Mary T. Topalov
/s/ Geneva Sparks

14.30

STATE OF MICHIGAN) SS.
COUNTY OF WAYNE)

On this 1st day of October, 1968 before me, the subscriber, a Notary Public in and for said County, came Louis W. Anschultz, a Deputy Sheriff of said County, known to be to be the individual described in and who executed the above conveyance, and acknowledged that he executed the same as his free act and deed as such Deputy Sheriff.

/s/ Elizabeth Sanzion
Notary Public, Wayne County, Mich.
My commisssion expires: Jun 19 1972

(AFFIDAVIT OF POSTING)
STATE OF MICHIGAN)
COUNTY OF WAYNE) SS.

Daniel M. King being duly sworn, deposes and says that on the 31st day of May, 1968, he posted a true copy of the Notice annexed to the affidavit of publication hereto attached in a conspicuous place upon the premises

described in said Notice by attaching the same in a secure manner to The fron (sic) door frame of the dwelling house situated on said premises.

/s/ Daniel N. King

Subscribed and sworn to before me this 5th day of June, 1968.

/s/ Rose Barkoff
Notary Public, Wayne County, Mich
My commission expires:
October 21, 1969

(AFFIDAVIT OF AUCTIONEER)
STATE OF MICHIGAN)
COUNTY OF WAYNE) SS.

Louis W. Anschultz being duly sworn, deposes and says that he is a Deputy Sheriff of said County of Wayne; that he acted as Auctioneer and made the sale as described in the annexed Deed pursuant to the foregoing printed notice and certificates; that the sale was opened at 12 o'clock noon of the 1st day of October, 1968, at the Southerly or Jefferson Avenue entrance to the City-County Building in the City of Detroit, Michigan, that being the place of holding the Circuit Court in the said County of Wayne, and was kept open for one hour; that the highest bid for the premises described in the annexed deed was the sum of TWELVE THOUSAND SIX HUNDRED ELEVEN AND 46/100 ($12,611.46) DOLLARS made by METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation,

the Grantee in the annexed Deed; that the sale was in all respects open and fair; and that he did strike off and sell the said premises to the said Grantee, who purchased the said premises faily, and in good faith, as deponent varily believes.

/s/ Louis W. Anschultz

Subscribed and sworn to before me this 1st day of October, 1968. /s/ Elizabeth Sanzion
Notary Public

STATE OF MICHIGAN)
COUNTY OF WAYNE) SS.

I do hereby certify, that the within Sheriff's Deed will become operative at the expiration of one year from the 1st day of October, 1968, unless otherwise redeemed according to law, in such case made and provided.

/s/ Louis W. Anschultz
Deputy Sheriff

F 324199
SHERIFF'S DEED on MORTGAGE SALE
VIRGINIA CRAMER
By Louis W. Anschultz, Deputy Sheriff

TO
METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation

ORIGINAL 234 236

EXHIBIT K

As of Sept 6th (1968) Metro needs:

10 months	County Tax at 37.57	375.70
3 months	M.G.I.C. at 2.51	7.53
3 months	City Tax at 7.47	22.41
28 months	Hazard Ins. at 4.00	112.00
		517.64
	Balance in Escrow	- 2.82
		514.82
	As of 9-6-68	100.00
		414.82

Filed November 16, 1979 - No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF MOTION TO VOID, NULLIFY AND/OR VACATE Wayne County Circuit Court "Order Dissolving Temporary Restraining Order" dated September 27, 1968, entered in prior action (Wayne) No. 115-792, and reported in DEFECTIVE DECISION 401 Mich 252.

FACTS

On July 29, 1963, Petitioner-Cramer obtained a mortgage loan from Metropolitan Federal Savings and Loan Association to purchase residence property and signed a mortgage (promissory) note and mortgage covenant and agreement. The mortgage covenant required mortgagor to pay "escrow" funds to teh mortgagee, as estimated by mortgagee, in monthly installments for the future liabilities of taxes and insurance applicable to said real property, as provided in paragraph 2 of the said mortgage covenant and agreement, as follows:

> "2. * * * The said installments shall be equal, respectively, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be held by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single payment. If the sums so deposited shall not be sufficient to pay the taxes, assessments and premiums when the same become due, mortgagor agrees to forthwith pay to mort-

gagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefor, the excess shall be credited upon the principal."

Mortgagee-Metropolitan furnished monthly installment-payment cards to the said mortgagor wher the estimated sums for "escrow" were included in the total or aggregate amount consisting of principal, interest and "escrow". Mortgagee refused to furnish receipts or copies of receipts for any or all disbursements made from mortgagor's "escrow" account with the explanation that even if receipts were furnished to mortgagor she would not understand them. Thus, mortgagor never saw any tax bills as assessed in her name as title-holder of said property; she never saw any insurance billings in her name. Mortgagee-Metropolitan obtained said tax bills and insurance billings directly from the taxing authorities and insurance companies all during the period of the mortgage, and mortgagor was denied access to said billings involving said mortgaged property.

Further, on April 26, 1968, mortgagor complained to the mortgagee (Metropolitan) that:

(a) Mortgagee-Metropolitan failed and neglected to pay the taxes or insurance timely, in 1963, 1964, 1965 and 1967, jeopardizing the security of mortgagor and her property as title-holder.

(b) Mortgagee required, from time to time, excessive "escrow" funds which mortgagor disputed and recomputed using the same figures which mortgagee used in said

computations, and which said requirements would have resulted in excessive "escrow" amounts if mortgagor had not disputed said computations as she did. The said "excessive" requirements were in addition to and separate and apart from the mortgagee's estimated amounts as shown in the aggregate amounts of principal, interest and "escrow" by the monthly-installment payment cards.

(c) Mortgagor paid the "escrow" amounts each and every month without fail, by the aggregate amount shown on the payment cards, and she paid additional amounts into the "escrow" account after recomputing the "excessive" amounts computed by the mortgagee.

(d) Because of mortgagee's failures and negligence in mishandling mortgagor's "escrow" funds, mortgagor requested that she be permitted to pay her own liabilities of taxes and insurance, directly, instead of by "escrow" funds for mortgagee's seld-dealing purposes.

During the history of this mortgage loan, where the mortgagee had sole control of the allocation of payments as to principal, interest and "escrow", payments by mortgagor were made as follows:

	Aggregate Amts Required by Mortgagee (Metro)	Mortgagor Cramer Paid
7-29-63, at closing	$ 619.05	$ 619.05
First monthly installment due Sept 15, 1963		
1963		
4 months at $133.50	534.00	534.00
Additional "escrow"	144.00	144.00
1964		
12 months at $133.50	1,602.00	1,602.00
1965		
2 months at $133.50	267.00	267.00
4 months at $147.00	588.00	588.00
6 months at $147.00	882.00	1,284.94
Additional "escrow" paid		243.00
1966		
12 months at $147.00	1,764.00	2,771.41
1967		
2 months at $147.00	294.00	444.04
10 months at $150.00	1,500.00	2,324.31
1968		
2 months at $150.00	300.00	478.22
1 month at $154.00	154.00	245.04
1 month at $186.00 (April)	186.00	196.17
	$8,834.05	$11,741.18

Mortgagor's payment for April 15, 1968, which was the last current monthly installment, immediately prior to the published foreclosure of May 23, 1968 was accepted and allocated by Metropolitan-mortgagee as follows:

April 26, 1968	Principal & interest	$103.81
	Escrow	82.19
	Additional principal	10.17
		$196.17

The mortgage note provided for a 15-day forbearance or waiver period, for current payments made during and between the 15th and the 30th of each month, as follows:

> " * * * At its option, in lieu of increasing the rate of interest as above provided during the period of any default, the association may collect a "late charge" not to exceed an amount equal to four per centum (4%) of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments."

Therefore, "Late charges" were not applicable until after the 30th of each month. The monthly-installment payment cards also showed "AFTER THE 30TH ADD LATE CHARGE" which was an election of the option by the mortgagee.

Mortgagee (Metropolitan) did not answer to mortgagor's request of April 26, 1968, regarding being permitted to pay her own liabilities of taxes and insurance directly instead of by "escrow" funds for mishandling by said mortgagee, and on/or about May 5, 1968, mortgagee (by John C. Denyer) telephoned Cramer and orally required payment of over $400.00 by May 10, 1968, and also refusing to furnish mortgagor-Cramer anything in writing to support said "requirement" of over $400.00. Mortgagor-Cramer refused to pay said $400.00, where mortgagee refused to furnish any supporting written information or demand.

Subsequently, mortgagee furnished the following inconclusive and insufficient memo, without any supporting receipts or other information:

"As of May 10th Metro needs:

6 months County Tax at 37.57	$225.42
11 months City Tax at 7.47	82.17
24 months Hazard Ins. at 4.00	96.00
11 months M.G.I.C. Ins. at 2.76	30.36
	$433.95
Less Credit balance in "escrow"	32.92
Shortage of requirements	$401.03 "

With the recent increase in April 1968 for "escrow" from $50.19 to $82.19 per month, the additional $401.03 "required" by said mortgagee would have resulted in an excessive amount in the "escrow" account of $468.95 at the end of the year 1968 and after disbursements.

Mortgagee exercised the power of sale on/or about May 16, 1968, where the first insertion of foreclosure publication occurred on May 23, 1968, where the published foreclosure amount of $12,519.37 included $433.95 of mortgagor's own moneys, which was not an "indebtedness secured." The published foreclosure figure of $12,519.37 was in excess of the entire indebtedness of $12,008.99, as follows:

Principal balance	$12,041.91
Less "escrow" credit	32.92
Indebtedness secured	$12,008.99
Excessive interest	109.35
Mortgagor's own moneys—	401.03
Published foreclosure amount	$12,519.37

The said foreclosure by advertisement was a premature exercise of the power of sale, precipitously and maliciously, in perversion of said power of sale where mortgagee foreclosed on mortgagor's own moneys for "escrow"—for future taxes and insurance not yet assessed, not yet billed, where nothing was due and nothing was unpaid, and no "deficiency" existed.

The power of sale in paragraph 8 reads as follows:

"8. In the event of default in the payment of said indebtedness, or any part thereof, or in the performance of any of the covenants or conditions hereof, mortgagee may, without notice, at its option, declare the entire indebtedness secured hereby due, then or thereafter, as it may elect, regardless of the date of maturity and is hereby authorized and empowered to sell or cause to be sold said premises, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder, and all costs and charges of the sale (including the attorneys' fee provided by statute), rendering any surplus moneys to mortgagor. The commencement of proceedings to foreclose this mortgage in any manner authorized by law shall be deemed an exercise of the above option."

(Contrary to the defective and dishonest decision of the Michigan Supreme Court, reported at 401 Mich 252, mortgagor-Cramer never failed to pay "escrow" each and every month; Cramer never defaulted "in the performance of any of the covenants or conditions" for the reason that she paid "escrow" amounts to said mortgagee each and every month without fail prior to the foreclosure publication.)

Mortgagor-Cramer disputed the excessive sum of $401.03 for the reason that the excessiveness was obvious to anyone with the ability to add, substract and divide in two-digit sets of figures. Unfortunately, the members of the Michigan Supreme Court lack such minimal talent in simple arithmetic, being mentally disabled by pathetic delusions of what constitutes justice under the law, and where the Michigan Supreme Court has said "For a

period of time, plaintiff made timely payments, including escrow, and in fact, was well ahead of her repayment schedule for principal." No right of foreclosure exists where mortgagor "was well ahead of her repayment schedule" and even including the payments immediately preceding the foreclosure date of May 23, 1968, where in the January, February, March and April payments the mortgagee credited said mortgagor with additional principal where the mortgagee had sole control of the allocation of the aggregate sums of principal, interest and "escrow."

Further, the Michigan Supreme Court has corruptly changed the "Order Dissolving Temporary Restraining Order" dated September 27, 1968, which was not an appealable judgment, as follows: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default."

Following the entry of the "Order Dissolving Temporary Restraining Order" of September 27, 1968, the mortgagee (Metropolitan) submitted the Sheriff's Bidding Statement where there was no "deficiency" in escrow shown and instead showed an "escrow" credit balance which the said mortgagee applied in reduction of the principal balance and where the said mortgagee sold the property to themselves on October 1, 1968, three (3) days after said Order dated September 27, 1968. Therefore, no alleged deficiency existed.

In the prior "proceedings" the attorneys hired by mortgagor (sho are also named parties in this action) by acts of negligence, misconduct, legal malpractice, fraud, deceit and concealment, failed to take issue with said "Order Dissolving Temporary Restraining Order" entered September 27, 1968. Further, attorney-Allen Counard misrepresented to

client-Cramer that in August 1971 by his "Motion to Strike" pertaining to affirmative defenses of mortgagee-Metropolitan as to "adjudged in default" and that the Wayne Circuit Court in granting said motion to strike that the adjudication of default had been removed. Further, an Order granting of denying motion to strike is not appealable.

The entire foreclosure matter is and was a perpetration of fraud, and whereby it involves fraud, concealment and deceit of the attorneys (on both sides) and constituting legal malpractice (on both sides), defendant-mortgagor did not have a full and fair opportunity to litigate the issue in the prior "proceedings" and where the Michigan Supreme Court has condoned fraud, by the decision rendered October 6, 1977, reported at 401 Mich 252, said mortgagor-defendant-Cramer is not collaterally estopped in this action presenting a federal question in a federal court.

ARGUMENT AND LAW

The "Order Dissolving Temporary Restraining Order" entered in the prior "proceedings" in the Wayne Circuit Court No. 115-792, dated September 27, 1968, was not an adjudication of "Default" in mortgagor-Cramer's mortgage, where said mortgagor was not permitted to be heard. In 59 CJS, Mortgages, at 601 (page 1051) it is stated:

> " * * * The mere fact that a mortgagor takes not legal steps to stop a foreclosure which is wholly unauthorized and void because no default in the conditions of the mortgage has occurred does not necessarily bar him on the ground of ratification or estoppel from questioning it afterward * * * ."

Further, in 59 CJS, Mortgages, at 559(page 924) "Notice of default."

> "There must be a compliance with statutory provisions requiring the filing of a notice of default, * * * A notice filed before actual default is premature, and a sale thereunder has been held to be void." Hayward Lumber & Investment Co. v Corbett, 32 P2d 41, 138 Cal App 644.

Thus, where there was no default in the conditions of the mortgage and where mortgagor-Cramer had never failed to perform her covenant the performance of which was to pay "escrow" funds to the mortgagee, the mortgagee failed to comply with statutory provisions and in fact, violated statutory provisions by commencing said foreclosure by advertisement where mortgagor was not in default in the performance of a condition where mortgagor-Cramer paid "escrow" each and every month without fail.

> MCLA 600.3204; MSA 27A.3204; "To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure, it shall be requisite: (1) That some default in a condition of such mortgage shall have occurred, by which the power to sell became operative; * * * ."

Where there was no default by said mortgagor-Cramer and where said mortgagor paid "escrow" moneys to mortgagee each and every month without fail, the power of sale was not operative. "Powers of sale should be strictly construed and fairly exercised, * * * " 59 CJS 557, Mortgages; and "Where statutes regulate the exercise of powers of sale in mortgages and trust deeds, full compliance with such provisions is essential to the validity of the sale. The statute in such cases supersedes the grant of power in the mortgage and is read into it as though set out therein." Thus, where mortgagor had never failed to pay "escrow" moneys in performance

of the conditions of said mortgage, there was no default by the mortgagor and the said mortgagee was not authorized to exercise the power of sale.

Furthermore, where there was no deficiency in the "escrow" account and instead there was an "escrow" credit balance which the mortgagee applied in reduction of the principal balance on the Sheriff's Bidding Statement of October 1, 1968, therefore, there was no "indebtedness" in the "escrow" account. The sum of $401.03 which the mortgagee included in the amount claimed to be due, by publication of the "Notice of Mortgage Sale" dated May 23, 1968, was not an "indebtedness" and where mortgagor had not "defaulted" in payment of escrow, and in fact, mortgagor had paid "escrow" each and every month without fail, the entire foreclosure occurrance and the "proceedings" following were the perpetration of a fraud by the mortgagee-Metropolitan and their attorneys.

The mortgagee foreclosed the mortgage loan in acceleration of mortgagor's own moneys, which was not an indebtedness and where said mortgagee had not advanced any of its moneys and where there was no "deficiency" in the "escrow" account. There mortgagee exercised the power of sale to foreclose on mortgagor's own moneys, in perversion of said power of sale, mortgagee had declared "the entire indebtedness secured hereby due" which wrongfully included mortgagor's own moneys for for payment of Future taxes and insurance and where nothing was due and nothing was unpaid. The said "indebtedness" was only the principal balance owing of $12,041.91 less "escrow" credit balance of $32.92, or "indebtedness" of $12,008.99, as of May 23, 1968 the date of publication, and which mortgagee published a figure of $12,519.37, contrary to the provisions of paragraph 8 of the mortgage covenant and agreement, and in violation of the mortgage (promissory) note, during the

> period of any default, the association may collect a "late charge" not to exceed an amount equal to four per centum (4%) of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments."
> (Signed) Virginia Cramer (L.S.)"

Thus, where no "late charges" were applicable and where the mortgagee (Metropolitan) had complete and sole control of the allocation - of the aggregate amount consisting of principal, interest and "escrow", and where said mortgagee credited mortagor's "escrow" account each and every month without fail, there was no default in the conditions of the mortgage where mortgagor never failed to perform her covenant, the performance of which was the payment of "escrow" moneys as a condition.

The foreclosure by advertisement action was a misuse of process for the reason that mortgagor was not in default of any conditions of the mortgage covenant and agreement, and where the mortgagee retracted the "waiver" - period of 15 days and published the foreclosure on May 23, 1968, prior to the 30th of the month, prematurely and maliciously for the reason that mortgagor complained about the mishandling of said "escrow" funds and where mortgagee failed and neglected to pay taxes and insurance timely or when due with said mortgagor's "escrow" funds. In 11 M.L.P., Estoppel, at 7, Waiver, it states:

> "Waiver is the intentional relinquishment of a known right by acts which indicate an intention to relinquish it or by so neglecting and failing to act as to induce a belief that it was the intention and purpose to waive. * * * An executory waiver, being in the nature of a promise

forebearance or waiver period of 15 days, where no late charges and no penalty would be applicable.

In Black's L. D. 4th edition, "Forbearance" is defined as:

> "Act by which creditor waits for payment of debt due him by debtor after it becomes due." Upton v Gould, 64 Cal App 2d 814, 149 P2d 731, 733
>
> "A delay in enforcing rights." Shaw v Philbrick, 129 ME 259, 151 A 423, 74 ALR 290
>
> "Indulgence granted to debtor." Dry Dock Bank v American Life Ins. etc. Co. 3 NY 354
>
> "Refraiing from action. The term is used in this sense in general jurisprudence, in contradistinction to "act." Hafer v Spaeth, 22 Wash 2d 378, 156 P2d 408, 411

Where the mortgage (promissory) note allowed mortgagor to pay within 15 days after the due date, without penalty or late charge, this constitutes a waiver which cannot be retracted.

The mortgage (promissory) note, and as incorporated in the mortgage covenant and agreement by reference, provides as follows:

> " * * * The monthly payments herein provided for shall be applied first upon interest and the remainder upon principal.
>
> "Privilege is reserved to prepay, without premium or fee, the indebtedness in whole, or in an amount equal to one or more monthly payments on the principal that are next due on this note, on the 15th day of any month prior to maturity, provided that the monthly payment due on the said 15th day of the month shall have been paid. At its option, in lieu of increasing the rate of interest as above provided during the

or a contract, must be supported by consideration to be enforceable, but a waiver, partaking of the principle of an election, needs no consideration and cannot be retracted." American Locomotive Co. v Chemical Research Corp., 1949 171 F2d 115, cert den 69 S Ct 515, 336 US 909, 93 L Ed 1074, and American Locomotive Co. v Gyron Process Co., 69 St Ct 515, 336 US 909, 93 L Ed 1074.

Thus, where mortgagor could not even expect "late charges" to be applicable, until after the 30th of the month, the mortgagee accelerated the indebtedness of principal, prematurely and maliciously, during the 15-day "waiver" period of the mortgage note, in violation of said waiver period by retracting the waiver without notice. Also, in the instant case, mortgagor was disputing the excessive amounts computed by the mortgagee and labeled as "shortage of requirements" and where there was no deficiency in mortgagor's "escrow" account. The Notice of Mortgage Sale published on May 23, 1968, before actual default, was premature (mortgagor's payment of May 29, 1968, was the first and only payment which did not include any "escrow") and a sale thereunder has been held to be void by the court. Hayward Lumber & Investment Co. v Corbett, 32 P 2d 41, 138 Cal App 644.

"To enforce a mortgage, the mortgagee must prove his debt, and can recover only to the extent of what he proves." Wood v Weimar, 104 US 786, 26 L Ed 779

The foreclosure was illegal for the reason that "escrow" money is not a debt. Further, in 17A CJS, Contracts, at 397, it states: " * * * and where a contract has been fully performed by one party it cannot be terminated by the other." Union Pacific Railroad Company v Kansas City Transit Company, Inc., 401 SW 2d 528, 534; Business Men's Assur. Co. of America v Eades, 161 SW 2d 920, 290 Ky 553.

Taxes are not valid debts unless lawfully imposed. Gully v First National Bank, 1936, 299 US 109, and the "escrow" monies are not an indebtedness (or not a debt) where no taxes and no insurance were due, none were assessed; none were billed, and none were unpaid. Nothing was due and nothing was unpaid. However, mortgagee blatantly refused to provide anything to substantiate the "requirements" for the "escrow" account, and further, mortgagee blatantly refused to provide receipts or copies of receipts to substantiate any disbursements from the "escrow" moneys belonging to the mortgagor. The United States Supreme Court in Longyear v Toolan, 209 US 414, 28 S Ct 506, (1908) held that it was unquestioned that the owner of real property is entitled to claim the protection of the Due Process Clause in respect to the assessment and collection of taxes.

The mortgage contract in the instant case does not provide for a foreclosure on "moneys" and the debt or indebtedness had not matured. Black's LD Rev 4th ed., defines "indebtedness" as not a contingent liability.

> "A contingent liability * * * does not constitute indebtedness." St. Louis Perpetual Ins. Co. v Goodfellow, 9 Mo 149

Further, Black's LD 4th ed, defines "debt" as A sum of money due by certain and express agreement; as by * * * a bill or note * * * where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it." Hagar v Reclamation Dist., 111 US 701, 4 S Ct 663, 28 L Ed 569. "A sum payable upon a contingency, however, is not a debt, or does not become a debt until the contingency has happened." People v Arguellio, 37 Cal 524. Thus where the amount is unknown, or not specific, and the contingency had not

occurred such as a billing or assessment of a sum of "moneys" certain or fixed, there were no such "moneys" due or payable, in the amount of $401.03 and where the mortgagee foreclosed upon "moneys" for future taxes and insurance, not yet assessed, not yet billed, and not due, the said foreclosure was a perversion of the exercise of the power of sale. (See, Burger, A Sick Profession: 5 Tulsa L.J. 1 (January 1968)) Where the Michigan Supreme Court, as reported in 401 Mich 252, condones the fraud and the perversion of the exercise of the power of sale, and which brings the case into a worse condition, there is no question that the members of the Michigan Supreme Court are mentally disabled. No right of foreclosure exists where mortgagor was not in default of any conditions of the mortgage and where said mortgagor had paid "escrow" moneys each and every month without fail, and together with other "escrow" amounts separate and apart from the monthly-installment payments, prior to the foreclosure publication date of May 23, 1968, which was premature. In Salinger et al, v Lincoln Nat. Life Ins. Co., 52 F 2d 1080 (1931), the court held,

> "A foreclosure must comply with terms of contract. * * * Mortgagee could not properly apply moneys involved in reduction of principal amount of loan, which had not matured, and then invoke acceleration clause of mortgage by asserting that interest due was unpaid, and therefore that entire loan was due, and foreclosure of mortgage timely. * * * No right of foreclosure exists, in absence of default under either mortgage or some separate agreement."

In the instant case, mortgagor had considerably prepaid, more than she was required to pay,

where mortgagee had sole control of the allocation of principal, interest and "escrow". Mortgagee credited mortgagor's account with the amounts of "escrow" as estimated by said mortgagee and shown in the aggregate total on each installment-payment-card as furnished by mortgagee to the mortgagor-Cramer. Analagous to the reasoning in Salinger et al v Lincoln Nat. Life Ins. Co., supra, mortgagee could not properly apply moneys involved in reduction of principal, over and above the regular principal, and then invoke the acceleration clause of the mortgage by asserting that "escrow" allegedly due was unpaid and therefore entire loan was due on May 23, 1968, the published foreclosure date, and where mortgagor, in fact, had made payments including escrow, and in fact, "was well ahead of her repayment schedule" (401 Mich 252). In the instant case, m ortgagor had timely and conscientiously made her payments on the mortgage loan and into the "escrow" account, and in accordance with the monthly-installment-payment cards furnished by said mortgagee (Metropolitan), and which said payment cards specified the total aggregate amount which included principal, interest and "escrow", as shown below herein. There was no default in the payment of the debt secured and no default or no other breach of condition on the part of the mortgagor. Where the mortgagee failed to comply with the provisions of the power of sale and where such provisions do not include acceleration of payment of mortgagor's own moneys for "escrow" and where nothing was due, and that said "escrow" moneys, in no way was part of the "entire indebtedness", the foreclosure was illegal and was in perversion of the exercise of power of sale prescribing the conditions precedent to the exercise of the power of sale, where, first, a default in the secured would have had to occur. Thus, where there was no default by the mortgagor, there was no basis or no conditions precedent to the exercise of the provisions of the power of sale to permit said foreclosure. 59 CJS, Mortgages, at 559.

Mortgagor-Cramer began to pay ahead of her payment schedule in June of 1965 and continued paying more than she was required to pay each and every month therefrom and up to the time of the foreclosure dated May 23, 1968. The payments made by mortgagor for January, February, March and April 1968, immediately prior to said foreclosure date, and as allocated by mortgagee who had sole control of said allocation, were as follows:

1968	January	February	March	April
Principal & interest	$103.81	$103.81	$103.81	$103.81
Escrow	46.19	46.19	50.19	82.19
Additional principal	88.47	89.75	91.04	10.17
Total payment	$238.47	$239.75	$245.04	$196.17
Aggregate amount as shown on monthly payment card	$150.00	$150.00	$154.00	$186.00

Mortgagor-Cramer refused to pay "escrow", and especially in excessive amounts, after the foreclosure was published and not before said foreclosure-publication, for the reason that she was disputing the excessive amounts "required" by mortgagee-Metropolitan, and also for the reason that mortgagee's bookkeeping was disgraceful and said mortgagee mishandled the "escrow" by failing to pay mortagor's taxes and insurance when due and allowed said liabilities to become seriously delinquent jeopardizing the mortgagor's security and property as title-holder of said property.

The foregoing is herein set forth to show the court that mortgagor was not in default of any conditions of said mortgage, and that there was no basis for said foreclosure, and especially where mortgagor had paid "escrow" each and every month without fail prior to the said foreclosure date of May 23, 1968. The

entire foreclosure matter is a fraud perpetrated by the mortgagee and their attorneys, and where the court has condoned said fraud.

"Where material matters have arisen since a prior order to restrain the sale, the plea of res judicata may not be sustained." 59 CJS, Mortgages, at 552 (6) Hearing and Findings.

"Generally, the court may not try common-law issues and settle a disputed indebtedness between the parties," Gregg v Hight, 6 Mo App 579, "but issues material to the equitable relief sought (by plaintiff) should be decided," Smith v Bank of Pinehurst, 25 SE 2d 859, 223 NC 249.

* * * "In granting a temporary injunction the court has discretion to proceed ex parte." Douglas v Nagle, Civ App, 14 SW 2d 303.

In August of 1968, where the Wayne Circuit Court would not allow this mortgagor to proceed without hiring a lawyer, and where this mortgagor hired attorney-Abel Selburn who mis-managed the case, initially, and then abandoned the case in fraud of his client-Cramer, on September 27, 1968, the said Wayne Circuit Court entered an "Order Dissolving Temporary Restraining Order" which alleges that "the Court having determined that Plaintiff is in default on her Mortgage", and where no default was shown, said "Order" dated September 27, 1968, should be voided, nullified or vacated. Further, due to the negligence, failures, misrepresentations, legal malpractice, fraud, concealment and deceit of attorneys Abel Selburn and Allen Counard, whom the court forced your defendant-mortgagor to hire, and together with teh fraud perpetrated by the attorneys for the mortgagee-Metropolitan, and in fraudulently obtaining said "Order" where client-Cramer's attorney-Abel Selburn did not oppose the entry of said Order

and did not attend the hearing, if any, on september 27, 1968, and where client-Cramer's second attorney, Allen Counard, failed and neglected to take issue with said "Order Dissolving Temporary Restraining Order" on appeal or otherwise, in legal malpractice, the said "Order" should be voided, nullified and/or vacated, on the following grounds:

(a) Cramer, in pro per, prepared and filed her own pleadings in the Wayne County Circuit Court, on August 12, 1968, and obtained an "Order to Show Cause" with temporary restraining order enjoining the mortgage sale and foreclosure action.

(b) Where the said Wayne Circuit Court forced Cramer to hire a lawyer, and Cramer hired attorney-Abel Selburn - who failed and neglected to investigate the facts and the law and further, made no effort or attempts to amend Cramer's pro se pleadings, said pro se pleadings were insufficient to give jurisdiction.

In 59 CJS, Mortgages, at 552, Restraining Exercise of Power, (4) Pleadings (page 899), it states:

"A petition for an injunction to restrain the sale of land under a power in the mortgage or deed of trust must state fully and distinctly facts sufficient to justify the relief asked * * *. Facts and not merely conclusions of the pleader must be stated." Lester v Baxter, 191 SE 429, 184 GA 368, 111 ALR 493

" * * * if it is made to appear by the affidavit of the mortgagor, his agent, or attorney, that the mortgagor has a legal counterclaim, or any other valid defense against the collection of the whole or any

part of the amount claimed to be due, the judge may enjoin foreclosure and direct that further proceedings be had in court, the affidavit must be sufficient to support an order enjoining the sale," Green v Bartine, 209 NW 650, 50 SD 281, "and it should set forth the facts for the satisfaction of the judge, but the facts need not be stated with the same particularity required of pleadings." State v Buttz, 131 NW 241, 21 ND 540.

"An affidavit which does not allege that affiant is the mortgagor, his agent, or attorney, is insufficient to give jurisdiction." (emphasis added) Dowling v Medin, 195 NW 641, 46 SD 639.
"The application is designed to be so far ex parte as not to allow counter-affidavits as a matter of right." (emphasis added)
McCann v Mortgage, etc., Co., 54 NW 1026, 3 ND 172
Commercial Nat. Bank v Smith, 44 NW 1024, 1 SD 28

In the instant matter, the pro se pleadings were insufficient to give jurisdiction. Attorney-Abel Selburn made no effort or attempt to amend client-Cramer's pro se pleadings. The counter-affidavits of the mortgagee-Metropolitan "did not mean anything". (See Transcript of September 6, 1968)

"Mr. Selburn: I object to this on the basis he was not present at the closing.
"Mr. Doelle: It is in an affidavit.
"Mr. Selburn: He is testifying to something he was not present at.
"The Court: An affidavit does not mean anything."

Further, in 59 CJS, Mortgages, at 552, it

states: "The court may examine the mortgage as it appears of record where the record is properly identified." Beiseker v Svendsgaard, 149 NW 352, 28 ND 366. In the instant matter, there were absolutely no exhibits entered into the court record at said hearing of September 6, 1968, and nothing was identified at said hearing. The "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, as a result of the September 6, 1968 hearing, and which was the one and only hearing in said "proceedings", is not a "court" order and did not direct that further proceedings be had in court, and the court was without jurisdiction.

> "An order made in such proceedings is an order of the judge and is erroneously made as a "court" order."
> 59 CJS, Mortgages, at 552 (page 902)
> Dowling v Medin, 195 NW 641, 46 SD 639.

Furthermore, State statutes authorize appeals from judgments or orders of the court only, — and the "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, was not a judgment and was not a "court" order and was not appealable, and was entered in the absence of jurisdiction. The pro se application of "Plaintiff-Cramer" in the "proceedings" in the prior action (Wayne) No. 115-792, before Judge Thomas J. Murphy, was ex parte so as not to allow resisting affidavits of the mortgagee to be heard or considered by the judge upon the hearing of such application. Commercial Nat. Bank v Smith et al. (1890) 44 NW 1024, 1 SD 28.

Moreover, in Dowling v Medin, Circuit Judge, et al, the Supreme Court of South Dakota (1923) vacated an order enjoining the foreclosure of a mortgage by advertisement, as not properly a "court order," but an order of the judge, on the grounds of his lack of jurisdiction to make it.

As to the "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, and which is misrepresented by the members of the Michigan Supreme Court, in 401 Mich 252, as, to wit: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." --- and which is not a judgment and there were no findings of fact by the court, the Wayne Circuit Court was without jurisdiction to entertain the defendants' resisting affidavits and thus, the Wayne Circuit Court was without jurisdiction to make any finding of "default," where the mortgagee had initiated the foreclosure by advertisement and said foreclosure matter is strictly a Legislative matter, under the provisions of the Michigan State Statute of foreclosure by advertisement. (See mortgagor-Cramer's "Motion for Reformation of Michigan Supreme Court Defective Decision reported at 401 Mich 252" following hereto, where federal questions are presented as to legislative state action and judicial state action involved in the application of MCLA 600.3201 et seq., MSA 27A.3201 et seq.; "Foreclosure by Advertisement" add constitutional questions involved under federal law.)

> "Although the requirements of mutuality need not be met for collateral estoppel to be applied in an action presenting a federal question in a federal court, even if the party asserting the estoppel was a stranger to the prior action, the doctrine of collateral estoppel was inapplicable where the party against whom the estoppel was asserted did not have a full and fair opportunity to litigate the issue in the prior proceeding since the issue of liability was therein determined by a court sitting without a jury in an injunction proceeding and the defendant (defendant-mortgagor herein) was entitled to trial by jury as a matter of right under the

United States Constitution and the Federal Rules of Civil Procedure, in the subsequent civil action. Rachal v Hill (CA 5) 435 F2d 59, cert den 403 US 904, 29 L Ed 2d 680, 91 S Ct 2203.

Thus, the "Order Dissolving Temporary Restraining Order" dated September 27, 1968, should be voided, nullified and/or vacated, coram non judice, for the reasons above-shown and as dependent upon lack of jurisdiction and/or absent of jurisdiction, and summarized as follows:

1. The Wayne Circuit Court (prior action No. 115-792) was without jurisdiction to entertain mortgagee's resisting affidavits in an ex parte application and proceeding to enjoin the foreclosure by advertisement.

2. No exhibits and no identifications were entered into the record at the hearing resulting in an "Order Dissolving Temporary Restraining Order" dated September 27, 1968, and no default in the mortgage was shown.

3. The saie "Order Dissolving Temporary Restraining Order" was not a judgment (as misrepresented in 401 Mich 252); it was not an order of the "court"; it did not direct that further foreclosure proceedings be had under the supervision of the court; there were no findings of fact relative to "default in the mortgage" or anything else; jurisdiction of the court may not be invoked to enforce provisions of an illegal contract; that an Order made by the Court without jurisdiction is void; that a court order obtained upon a false and fraudulent suggestion or allegation is a nullity.

4. Mortgagor-Cramer's evidence was not heard and the judge would not permit mortgagor-Cramer to be heard.

5. That by the misconduct, negligence, failures, fraud, deceit, concealment, and legal malpractice of the attorneys whom mortgagor-Cramer hired, and where said attorneys neglected and failed to investigate fact and law and failed to take issue with said "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, fraudulently as a finding of "default in Plaintiff's mortgage"—in the absence of due process, defendant-mortgagor-Cramer's affidavit did not show facts sufficient to invoke the judicial power to enjoin the foreclosure by advertisement, and the said attorneys, whom defendant-mortgagor-Cramer hired for their so-called "expertise" in the law, failed and neglected to seek the proper remedy as to the fraudulent "finding of default" where said — "Order" dated September 27, 1968, was fraudulently obtained, and where the attorneys of record (on both sides) perpetrated fraud upon defendant-mortgagor-Cramer and upon the court, in legal malpractice.

For the reasons herein-shown, the "Order Dissolving Temporary Restraining Order" dated September 27, 1968, in prior action (Wayne) No. 115-792, entered in the absence of jurisdiction, and misrepresented as reported in 401 Mich 252, should be voided, nullified and/or vacated, coram non judice.

Respectfully submitted,
/s/ Virginia Cramer
Petitioner In Pro Per
Defendant-mortgagor

Dated:
Nov 12, 1979

(Affidavit attached)

Filed November 23, 1979 - No. 9-72789
U. S. District Court

RESPONSE TO PLAINTIFF'S MOTION TO VOID NULLIFY, OR VACATE WAYNE COUNTY CIRCUIT COURT ORDER DATED SEPTEMBER 27, 1968

The Defendants and Co-Defendants McClintock Donovan Carson & Roach, James I. McClintock, Michael Doelle and William P. Thorpe, by their attorneys McClintock Donovan Carson & Roach responds to Plaintiff's Motion to Void, Nullify, or Vacate Wayne County Circuit Coirt Order dated September 27, 1968 and states that said Motion contins the same matters alleged in Plaintiff's Complaint for Declaratory Judgment and Petition for Removal and Defendants and Co-Defendants hereby adopt by reference their Motion to Dismiss dated August 8, 1979 and heretofore filed in this Court on August 9, 1979 and state that the Court should dismiss the instant Motion and grant the other relief requested in Defendant's Motion to Dismiss.

Respectfully submitted,
MCCLINTOCK DONOVAN CARSON & ROACH
unsigned
By William P. Thorpe (P21436)
Attorneys for Defendants and Co-Defendants

Dated:
Nov 20, 1979

Filed December 3, 1979 No 9-72789
U. S. District Court

OPPOSITION TO DEFENDANTS AND CO-DEFENDANTS RESPONSE TO MOTION TO VOID, NULLIFY, OR VACATE WAYNE COUNTY CIRCUIT COURT ORDER DATED SEPTEMBER 27, 1968

Petitioner-mortgagor-Cramer, in pro per, in

opposition to Defendants and Co-Defendants McClintock Donovan Carson & Roach, et al, response to her Motion to Void, Nullify, or Vacate Wayne County Circuit Court Order Dated September 27, 1968, says as follows:

1. That Co-Defendant William P. Thorpe, on his own behalf and on behalf of Defendant-Metropolitan Federal Savings and Loan and other Co-Defendants James I. McClintock, Michael Doelle, et al, continues to mislead and misrepresent matters to the court; and that contrary to said "response" and their Motion to Dismiss filed August 9, 1979, Co-Defendant William P. Thorpe evades the issues and the underlying facts of fraud, concealment and deceit of the attorneys (on both sides) and constituting conspiracy and legal malpractice, and where your Petitioner was subjected to:

a. conspiracy and collusion, and legal malpractice

b. denial of due process; and corrupt practices in courts

c. deprivation of civil rights

d. denial of redress of grievances

e. state court opinions and decisions based on false facts

f. state action (exertion of power) involved, without jurisdiction

g. wrongful foreclosure; illegal foreclosure on illegal contract

h. deprivation of right and/or opportunity to be heard

i. fraud condoned by the state court, in absence of jurisdiction

j. unscrupulous and perverted mentality of the sick members of the legal profession; negligence and deceptions

K. perversion of camaraderie and cover-up between unprincipled members of the legal system

l. Illegal ex parte communications between lawyers and judges and exploitation for unjust purposes

m. oppression, humiliation and damages

n. among other injustices; anti-trust violations.

2. That Co-Defendant-attorney William P. Thorpe is the only party, and on behalf of his unscrupulous clients, who has filed any pleading in "response" to Petitioner-mortgagor-Cramer's "Motion to Void, Nullify and/or Vacate Order dated September 27, 1968"; that none of the other multiple-parties in this suit have taken any exception to said Petitioner's motion.

3. That all during the state court "proceedings" said members of the "legal" profession sought and successfully invoked and obtained, by fraud, concealment and deception, the aid of the court to enforce an illegal contract.

4. That Co-Defendant-attorney William P. Thorpe now asserts as his affirmative defense: "lack of jurisdiction over the subject matter on the grounds that the matters stated therein are res judiciata and/or collaterally estopped".

5. BS. (pro se pleadings of layperson-litigant should be liberally construed by the federal courts)

6. That the federal courts have jurisdiction over the subject matter; res judicata may not be sustained; and that your Petitioner is not collaterally estopped where the subject matter was not previously litigated in the Wayne County Circuit Court prior action No. 115-792 and reported in 401 Mich 252, as more particularly shown in Petitioner's Motion to Void, Nullify and/or Vacate Order dated September 27, 1968 and her brief therein; and as more particularly shown, by omissions and deceptions in the Exhibits attached to attorney-William P. Thorpe's motion to dismiss filed on August 9, 1979; and Petitioner's brief herein.

WHEREFORE Petitioner-mortgagor-Cramer prays that this HONORABLE Court grant Petitioner's motion to void, nullify and/or vacate Order dated September 27, 1968, and deny Defendants and Co-Defendants motion to dismiss Petitioner's Complaint for Declaratory Judgment and deny such other relief requested by said Defendants and Co-Defendants.

Respectfully submitted,
/s/ Virginia Cramer,
Petitioner, Defendant-
Mortgagor in pro per

Dated:
Nov 30, 1979

Filed December 3, 1979 No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF OPPOSITION TO DEFENDANTS AND CO-DEFENDANTS RESPONSE TO MOTION TO VOID, NULLIFY, AND/OR VACATE WAYNE COUNTY CIRCUIT COURT ORDER DATED SEPTEMBER 27, 1968

(AND SUPPLEMENT TO MORTGAGOR-CRAMER'S MOTION)

FACTS:

The instant matter involves a mass mortgage-loan contract which requires the "borrower" to pay "escrow" moneys or funds, in advance, to the mortgagee-lending institution, for future liabilities of taxes and insurance-- which may become due on the mortgaged property. When the said contract is read in its entirety, the mortgagor is restricted, prohibited, precluded and prevented from paying said liabilities of taxes and insurance. The mortgage loan is not available unless the mortgagor agrees to pay said "escrow" funds. It is not a mutual covenant and where the mortgagee, in the instant case, failed and neglected to pay the taxes and insurance when due, and in fact, allowed said mortgagor's liabilities to become seriously delinquent and otherwise mishandled the said "escrow" fund account, mortgagor-Cramer requested that she be permitted to pay her own taxes and insurance directly, instead of paying "escrow" to said mortgagee.

In malicious retaliation to mortgagor's complaints regarding the mortgagee's failures and negligence, and where mortgagee "required" excessive "escrow" funds (called "cushioning" in the industry) said mortgagee foreclosed by-advertisement, utilizing the Michigan Foreclosure by Advertisement statute, MCLA 600.3201, et seq., MSA 27A.3201, et seq. Mortgagee-Metropolitan Federal Savings and Loan Association and their attorneys fraudulently alleged, to wit: "Mrs. Cramer * * * continually failed and refused to make escrow payments as required by paragraph2 of the Mortgage. * * * When the foreclosure was commenced, Mrs. Cramer's escrow account was deficient in the sum of $401.16 (57a-64a)" and where attorney William P. Thorpe cited the perjured testimony of John C. Denyer of Metropolitan Federal Savings and Loan, as-of September 6, 1968, in his Brief and Appendix on Appeal--Appellees, to the Michigan Supreme Court, No. 57215.

The Sheriff's Bidding Statement dated October 1, 1968, as prepared by Metropolitan and/or their attorneys McClintock Donovan Carson & Roach, showed no deficiency in the "escrow" account of Mrs. Cramer, and instead, showed a credit balance in said "escrow" account which the mortgagee applied in reduction of the principal balance. Thus, there was n o deficiency in Mrs. Cramer's "escrow" account, and Mrs. Cramer had paid "escrow" moneys to the said mortgagee each and every month without fail, together with other separate amounts for the "escrow" account, and where she had paid considerably ahead in her payment schedule while the mortgagee had complete and sole control of the allocation of the aggregate sums consisting of principal, interest and "escrow."

Thus, this is a new case arising upon new facts, and where in the prior action Mrs. Cramer's evidence was not heard and not permitted to be heard.

The entire context of the mortgage covenant and agreement is as follows:

"THIS MORTGAGE, made this 29th day of July, 1963, between Virginia Cramer of the City of Detroit, County of Wayne, Michigan, mortgagor, and METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation existing under the Home Owner's Loan Act of 1933 of the United States of American, mortgagee:

"WITNESSETH: That mortgagor, for and in consideration of the sum of Sixteen Thousand Five Hundred and No/100 dollars ($16,500.00) the receipt whereof is hereby acknowledged, and for the purpose of securing the re-payment of said sum, with interest, as hereinafter provided, and any additional sums

which mortgagor (jointly or severally if more than one joins herein) may now or hereafter owe mortgagee, for which this mortgage shall be a continuing security, and of securing the performance of the covenants and conditions hereinafter contained, hereby mortgages and warrants unto mortgagee the premises situated in the City of Dearborn Heights, County of Wayne, Michigan, described as follows:

East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 Of Part Of The SW 1/4 Of Sec. 6, T2SR10E, Dearborn Township WCM as recorded in L80 P2 Wayne County Records.

together with all easements and rights of way now or hereafter used in connection therewith and all fixtures (which shall include all articles that are ever furnished by a landlord in letting or operating an unfurnished building which are now or shall hereafter be attached to said premises in any manner).

Mortgagor covenants and agrees:

1. To pay to mortgagee at its office in the City of Detroit, Michigan, the principal sum of Sixteen Thousand Five Hundred and No/100 dollars, ($16,500.00) with interest thereon, according to the terms of a promissory note bearing even date herewith executed by mortgagor to mortgagee, which matures on the 15th day of August, 1988, and to pay when due any additional sums which mortgagor may now or hereafter owe mortgagee, as aforesaid. (emphasis added)

2. In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay mortgagee an installment

of the taxes and assessments levied or to be levied against said premises that will next become due, an installment of the premium or premiums that will next become due to renew the insurance on said premises (as hereinafter provided) and, if any life insurance is payable or assigned to mortgagee as additional security for said indebtedness, an installment of the premium or premiums that will next become due thereon. The said installments shall be equal, respectively, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be held by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single payment. If the sums so deposited shall not be sufficient to pay the taxes, assessments and premiums when the same become due, mortgagor agrees to forthwith pay to mortgagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefor, the excess shall be credited upon principal.

3. To keep all insurable property covered hereby insured against loss by fire and such other hazards as may be specified by mortgagee from time to time, in such amounts and for such periods as may be required by the mortgagee, and to pay when due all premiums on any such insurance in the manner above provided. (emphasis added) All insurance shall be carried in companies approved by mortgagee and the policies and renewals (emphasis added)

thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to mortgagee. Each insurance company concerned is hereby directed to make payment for such loss to mortgagee only, and the insurance proceeds, or any part thereof, may be applied by it upon any indebtedness secured hereby or to the restoration or repair of the property damaged, at its option, and any surplus shall be paid to mortgagor.

4. To pay when due all taxes, assessments and other charges which are now or shall hereafter be a lien against said premises, or any part thereof, and for which provision has not been made hereinbefore. (emphasis added)

5. To keep all property covered hereby in good repair and condition, to comply promptly with all laws, ordinances, regulations or requirements of any governmental authority applicable thereto, and to abstain from the commission of waste. (emphasis added)

6. Should any default be made in the covenants or conditions hereof, mortgagee may, without demand or notice, pay any taxes, assessments, premiums or liens required to be paid by mortgagor, make repairs, effect any insurance provided for herein, cause the abstract of title and tax histories of said premises to be certified to date or procure new abstracts of title and tax histories in case none were furnished to it and procure title reports covering said premises to be certified to date or procure new abstracts of title and tax histories in case none were furnished to it and procure title reports covering said premises, and the sums paid for any one or all of said purposes shall from the time of the payment thereof be due, with interest thereon at the

rate of seven per centum (7%) per annum, and shall constitute a further lien upon said premises under this mortgage. In the event of foreclosure the abstract or abstracts of title shall become the property of mortgagee.

7. The failure of mortgagor to pay any taxes or assessments levied against said premises, or any insurance premiums upon policies of insurance covering said premises, in accordance with the terms hereof, shall constitute waste. (emphasis added)

8. In the event of default in the payment of said indebtedness, or any part thereof, or in the performance of any of the covenants or conditions hereof, mortgagee may, without notice, at its option, declare the entire indebtedness secured hereby due, then or thereafter, as it may elect, regardless of the date of maturity and is hereby authorized and empowered to sell or cause to be sold said premises, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder, and all costs and charges of the sale (including the attorneys' fee provided by statute), rendering any surplus moneys to mortgagor. The commencement of proceedings to foreclose this mortgage in any manner authorized by law shall be deemed an exercise of the above option.

9. The covenants and conditions hereof shall bind, and the benefits and advantages thereof shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all

genders. In Witness Whereof, this mortgage has been signed and sealed by mortgagor. Signed and delivered in the presence of:

Frank E. Fike
Edward J. Gilroy Virginia Cramer (L.S.)"

The Mortgage Note (promissory note) in the amount of $16,500.00 dated July 29, 1963, provides as follows:

"For value received the undersigned, jointly and severally, promises to pay to Metropolitan Federal Savings and Loan Association, or order, at its office in the City of Detroit, Michigan, the principal sum of Sixteen Thousand Five Hundred and no/100 Dollars ($165,00.00) with interest from date on any part thereof at any time unpaid at the rate of 5 & 3/4 per centum (Five & 3/4%) per annum while there is no default hereunder, or under the mortgage securing this note, and at the rate of seven per centum (7%) per annum during the period of any such default, as follows: One Hundred Three and 81/100 Dollars $103.81) on the 15th day of September, 1963, and a like sum on the 15th day of each calendar month thereafter until the entire indebtedness secured hereby has been paid in full.

"In the event of default in any promise made in this note, or in the mortgage securing it, the holder of this note and said mortgage may, without notice, at its option, declare the entire indebtedness evidenced and secured thereby due and payable, then or thereafter, as said holder may elect, regardless of the date of maturity. Protest, presentment, demand and notice of non-payment are hereby waived by every signer or endorser hereof. (emphasis added)

"The monthly payments herein provided for shall be applied first upon interest and the remainder upon principal.

"Privilege is reserved to prepay, without premium or fee, the indebtedness in whole, or in an amount equal to one or more monthly payments on the principal that are next due on this note, on the 15th day of any month prior to maturity, provided that the monthly payment due on the said 15th day of the month shall have been paid. At its option, in lieu of increasing the rate of interest as above provided during the period of any default, the Association may collect a "late charge" not to exceed an amount equal to four per centum (4%) of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments.

(Signed) Virginia Cramer (L.S.) "

Metropolitan Federal Savings and Loan Association, as mortgagee, refused to furnish anything to substantiate their "requirements" for estimated amounts as to "escrow", and they refused to furnish receipts or copies of receipts as to any disbursements from the "escrow" account. Mortgagor-Cramer disputed the excessive amounts "required" by mortgagee to be paid into said "escrow" account, but mortgagor-Cramer never failed to pay "escrow" and mortgagee (Metropolitan) credited mortgagor-Cramer's "escrow" account each and every month without fail. In 1963, 1964, 1965 and 1967, mortgagee failed and neglected to pay the taxes or insurance when due, allowing said liabilities to become seriously delinquent, even though funds were available for the payment of said mortgagor's liabilities. Mortgagee-Metropolitan refused to permit

mortgagor-Cramer to pay her own bills directly, and foreclosed on the mortgage-loan, with malicious intent to cause damage and harm to mortgagor-Cramer.

It is the "policy" of the various and many lending institutions not to pick-up on another's foreclosure, and therefore, Cramer faced great difficulty in obtaining another mortgage-loan, and at a higher interest rate, to redeem on said foreclosure, in June of 1969, and at a time when the mortgage market was "tight" and funds were not readily available for even new mortgages.

The Michigan Supreme Court decision reported at 401 Mich 252 is based on false, distorted and twisted facts, in this case. Instead of "Here plaintiff refused to make the (escrow) payments", in actuality and the true fact is that the mortgagee refuses to accept the principal and interest without the "escrow." Further, the mortgagee refuses to accept the principal and interest unless "excessive escrow" is paid, to fatten their coffers for self-dealing purposes.

ARGUMENT AND LAW:

In the prior action (reported at 401 Mich 252) defendant-mortgagor-Cramer was not permitted to be heard on the foreclosure action taken by mortgagee-Metropolitan Federal Savings and Loan. The three (3) different lawyers whom Cramer hired, together with Metropolitan's lawyers, made the case with certainty so that Cramer would not be heard, in deprivation of her civil rights, among other deprivations and denial of due process. Therefor, the said foreclosure matter has never been litigated. Contrary to Mr. William P. Thorpe's assertion of "lack of jurisdiction over subject matter", the federal court properly assumes jurisdiction to determine issues of fact arising in a controversy.

"District court properly assumed jurisdiction of action to redress alleged deprivation of civil rights, wherein court's jurisdiction over subject matter was challenged, since court must assume jurisdiction to decide whether allegations state a cause of action on which court can grant relief as well as to determine issues of fact arising in the controversy." (emphasis added) Westminster School Dist. of Orange County v Mendez, C.C.A. Cal. 1947, 161 F 2d 774.

"The pleadings of a pro se complaint should be held to less stringent standards than formal pleadings drafted by lawyers." Dupart v U. S., C.A. La. 1976, 541 F 2d 1148; Shaw v Briscoe, C.A. Tex 1976, 541 F 2d 489, cert den 97 S Ct 1556, 430 US 933, 51 L Ed 2d 778; McKinney v De Bord, C.A. Cal 1974, 507 F 2d 501; Guilday v Department of Justice, DC Del. 1978, 451 F Supp 717; Pyles v Keane, D.C. N.Y. 1976, 418 F Supp 269.

The affirmative defense of res judicata is not available to Defendants and Co-Defendants; and Mr. William P. Thorpe, attorney and Co-Defendant herein, offers no proof that the "foreclosure" matter was ever heard by a court of competent jurisdiction. Defendant-mortgagor has never been permitted to testify, in any kind of court as to the "foreclosure."

"Res judicata is an affirmative defense and burden of proof is on the party asserting it." Howard v Green, C.A. Ark. 1977, 555 F 2d 178. The Michigan State courts had no authority to hear or determine as to the matter of foreclosure. Stewart v Eaton, (1939) 287 Mich Rep 466.

"The fundamental requisite of due process of law is the opportunity to be heard." Grannis v Ordean, 234 US 385, 394, 34 S Ct 779, 783, 58 L Ed 1363 (1914). "The hearing must

'at a meaningful time and in a meaningful manner.'" Armstrong v Manzo, 380 US 545, 552, 85 S Ct 1187, 1191, 14 L Ed 2d 62 (1965); Goldberg v Kelly, 397 US 254, 267, 90 S Ct 1011, 1020, 25 L Ed 2d 287 (1970).

The lawers whom mortgagor-Cramer hired made it impossible for Cramer to be heard, and particularly because of the "Order Dissolving Temporary Restraining Order dated September 27, 1968" which the Michigan Supreme Court decision, 401 Mich 252, fraudulently shows as: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." There is only one document entered by Judge Thomas J. Murphy (deceased in December 1969), and said document is not a "judgment", dated September 27, 1968. (See Petitioner-Cramer's Motion to Void, Nullify and/or Vacate Order dated September 27, 1968, filed herein on November 16, 1979.) This constitutes an original and independent proceedings, in the instant matter, to void, nullify and/or vacate an Order for fraud in the obtaining thereof, and where the State court acted without authority, and removable to the Federal district court according to the doctrine laid down in Gaines v Fuentes (La. 1876) 92 US 10, 23 L Ed 524.

"The character of the cases themselves is always open to examination for the purpose of determining whether, ratione materiae, the courts of the United States are incompetent to take jurisdiction thereof. State rules on the subject cannot deprive them of it." Barrow v Hunton, La. 1879, 90 US 80, 25 L Ed. 407.

> "Proceeding, which is equivalent of common law suit or equitable action to secure relief from an existing judgment, is independent action and removable, regardless of whether or not proceeding sought to be removed is independent in form." Id. Federal Sav. & Loan Ins. Corp. v Quinn, C.A. Ill. 1969, 419 F 2d 1014.

The Michigan Supreme Court opinion of October 6, 1977, as reported at 401 Mich 252, is based on false facts, and where said court had not authority to hear the matter or make any determination. Stewart v Eaton, supra, Further, the Michigan Court of Appeals (1971) 34 Mich App 638; 192 NW2d 50, said "Mrs. Cramer's evidence was not heard." The Federal Court of Appeals affirmed the federal district court, holding, "Principle of res judicata may not be invoked to sustain fraud and judgment obtained by fraud, or collusion, may not be used as basis for application of doctrine." Grummons v Zollinger, D.C. Ind. (1964) 240 F Supp 63, affirmed 341 F 2d 464.

> "Defense of res judicata would not be available in subsequent action as result of prior action between same parties where plaintiff's right had not been determined in prior action due to lack of opportunity to be heard and present evidence." Williams v Murdoch, C.A. Pa. 1964, 330 F 2d 745. (Id)

Where mortgagor-Cramer's evidence as to the matter of "foreclosure, and finding of default" in her mortgage has never been heard, the doctrine of estoppel is not available where the matter was not properly litigated, and because of lack of opportunity to be heard and present evidence. Stewart v Eaton, supra.

"Defense of estoppel is affirmative defense the efficiency of which cannot be determined until all facts are developed by an evidentiary hearing." (emphasis added) Collins v PBW Stock Exchange, Inc., D.C. Pa. 1976, 408 F Supp 1344.

> "Party seeking to take advantage of doctrine of estoppel must have relied to his detriment on some action or inaction by other party." Insurance Co. of North America v McCleave, C.A. N.J. 1972,

Defendant-mortgagor-Cramer asserts that the document entered by Judge Thomas J. Murphy, dated September 27, 1968, was fraudulently obtained; and that the Michigan Supreme Court rendered its opinion dated October 6, 1977, based on false and fraudulent facts. "Order made by court without jurisdiction is void." Jedele v Washtenaw Circuit Judge, 212 NW 89, 237 Mich 520. Where the finding of "default in her mortgage" and Mrs. Cramer's evidence was not heard (34 Mich App 638; 192 NW 2d 50) (1971) -- "In contemplation of law, a court order obtained upon a false suggestion is a nullity." In re Rothrock, 92 P2d 634, 14 Cal 2d 34. "An order by court without jurisdiction is void and remains without effect as completely as if never entered." Svistunoff v Svistunoff, 239 P2d 650.

Moreover, as the court can readily see upon reading the mass mortgage contract involved herein, and where the federal court has exclusive jurisdiction over the subject matter and involving suits between members of a combination, 15 U.S.C.A. 1, et seq. (Sections 1-7 and 12-27, Sherman and Clayton acts) the court is required to go to the common-law. See, 58 CJS, Monopolies, at 87. "One may not invoke the aid of the courts to enforce provisions of a contract which is invalid as in restraint of trade (or commerce) or tending to create a monopoly."

In the instant matter, when the mortgage contract is read in its entirety the restrictive covenant as to "escrow" funds inhibits, prohibits, precludes and prevents a mortgagor from complying with governmental laws, such as paying taxes and insurance on the mortgaged property, where the mortgagee fails and neglects to pay taxes and insurance with the "escrow" funds so collected. The Michigan Supreme Court opinion of October 6, 1977, reported at 401 Mich 252, considered only two (2) paragraphs of the said mortgage contract. There are nine (9) paragraphs in the mortgage contract involved, together with a separate instrument called a Mortgage Note, and which said matters were not priorly litigated. In Janich Bros., Inc. v American Distilling Co., C.A. Cal. 1977, 570 F 2d 848, the federal court of appeals said,

> "To establish a prima facie case of attem pted monopolization,a plaintiff must prove three elements:
>
> (1) specific intent to control * * * or destroy competition with respect to a part of commerce, (money)
>
> (2) predatory conduct directed to accomplishing the unlawful purpose, and
>
> (3) a dangerous probability of success."

"The phrase 'attempt to monopolize' means the employment of methods, means, and practices which would, if successful, accom plish monopolization and which, though falling short, nevertheless approach so close as to creat a dangerous probability of it." Knutson v Daily Review, Inc., C.A. Cal. 1976, 548 F 2d 795, cert denied 97 S Ct 2977, — 433 US 910, 53 L Ed 2d 1094. "In determining whether there was an attempt to monopoliz all of the acts of the defendants should be

viewed together." (Id) Knutson v Daily Review, Inc., C. A. Cal, supra.

In the instant case, some of the multiple defendants and co-defendants are members of the Michigan Supreme Court (see, 401 Mich 252).

Egads !!!

For the reasons herein shown, the court should deny all of the relief the Defendants and Co-Defendants have requested, and deny their motions to dismiss.

Respectfully submitted,

/s/ Virginia Cramer, -
Petitioner, Defendant-
mortgagor in pro per

Dated:
Nov 30, 1979

(Petitioner herein is still preparing other motions for filing in the federal court, in this matter, and it will be a few more days yet for said pleadings to be completed. Petitioner is troubled with failing eyesight and research is difficult because of the small print in said material.)
(Affidavit attached)

Filed December 21, 1979 - No. 9-72789
U. S. District Court

MOTION AND NOTICE OF MOTION FOR THREE-JUDGE COURT

TO: ALL PARTIES, DEFENDANTS AND CO-DEFENDANTS

PLEASE TAKE NOTICE that upon the complaint herein the undersigned will suggest to tnis court, the HONORABLE ANNA DIGGS-TAYLOR, at Room _____, United States District Court, Federal Building, 231 W. Lafayette, Detroit, Michigan, on January 17,

1980, at 9:30 A.M. in the forenoon, the necessity for the convening of a three-judge court in conformity with 28 USCA 1337, 28 USCA 2201, 28 USCA 2281, 28 USCA 2282, 28 USCA 2284, 28 USCA 2401 and 2403, et seq., and 28 USCA 1341, for the reason that Petitioner seeks to restrain and enjoin the Federal Home Loan Bank Board (Washington, D.C.) from refusing to issue cease-and-desist orders pursuant to 12 USCA 1461, 1464, against the approximately 5,000 (or more) banking-and-lending-mortgage-loan associations who are currently violating, encouraging and coercing, by "brain-wash" tactics, the said violations, have violated, and are about to violate commerce and antitrust laws and Acts of Congress under 15 USCA 1 and 15 USCA 2, et seq., (Sherman and Clayton Acts 1-7 and 12-27) and that Petitioner has reasonable cause to believe that the many and various such banking-and-lending-mortgage-loan associations, or any of them, are about to engage in an unsafe or unsound practice involving the collection of "escrow" funds from mortgagors and/or the non-payment of taxes and/or the delinquent payment of taxes on real property mortgaged, for a potential period of time of two to three years running concurrently and successively, causing irreparable injury, and involving illegal mortgage contracts tied-in with Foreclosure by Advertisement Statutes, MCLA 600.3201, et seq.; MSA 27A.3201 et seq., (and other foreclosure statutes among the several States) and which said illegal contracts are unenforceable against the mortgagee who collects said "escrow" moneys or funds; and that the Federal Home Loan Bank Board, its directors, officers, employees, and agents be restrained and enjoined from refusing to take affirmative action to correct the illegal conditions resulting from violations of 15 USCA 1, et seq., and illegal conditions of regulations promulgated by the members of the Federal Home Loan Bank Board under Title 12, Real Estate Loans,

Sections 545.6-1 et seq. and related sections, as to prepayment or advance payments of funds by mortgagors on individual mortgage contracts, and to restrain the enforcement and execution of said illegal contracts on mortgage loans, for repugnance to the Constitution of the United States.

Further, that Petitioner seeks to restrain and enjoin the members of the Michigan Supreme Court from refusing to take affirmative action to correct their decision and as reported at 401 Mich 252, copy of which has been filed in this federal district court, which violates the provisions of 15 USCA 1 and 2, et-seq. (Sherman and Clayton Acts, sections 1-7 and 12-27), and for repugnance to the Constitution of the United States, among other things.

Further, Petitioner moves this court for an interlocutory injunction and/or temporary restraining order to prevent irreparable injuries, such order to remain in force until the hearing and determination by the full court.

Accordingly, Petitioner will move for an order convening such a three-judge court for consideration of this action.

/s/ Virginia Cramer, Petitioner
(Defendant-mortgagor,
In Pro Per

Dated:
Dec 17, 1979

Filed December 21, 1979 - No. 9-72789
U. S. District Court

APPLICATION FOR THREE-JUDGE COURT
APPLICATION FOR INTERLOCUTORY PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER BY SINGLE JUDGE PENDING HEARING BY A THREE-JUDGE COURT

Petitioner (Defendant-mortgagor in wrongful

foreclosure) in pro per, upon her complaint heretofore filed herein and by allegations therein contained, and more specifically as set forth, but not limited to, in Count 9, ACTUAL CONTROVERSY - FEDERAL ACTION INVOLVED, and by the Michigan Supreme Court decision dated October 6, 1977, reported at 401 Mich 252, together with allegations contained, - but not limited to, Count 4, ACTUAL CONTROVERSY - STATE ACTION INVOLVED, and COunt 10, (requesting) INJUNCTIVE RELIEF AGAINST MICHIGAN SUPREME COURT JUSTICES, and in combination with Michigan Foreclosure by Advertisement Statutes, MCLA 600.3201 et seq., MSA 27A.3201 et seq., and other matters which more broadly and affirmatively allege acts in an unconstitutional manner and prohibitive by Acts of Congress under the provisions of 15 USCA 1, et seq. (Sherman and Clayton Acts sections 1-7 and 12-27) but not limited to, --- and acts prohibitive by the Fifth and Fourteenth Amendments to the United States Constitution ---Petitioner (defendant-mortgagor in wrongful foreclosure) hereby makes application for hearing of this cause and of the Petitioner-plaintiff's motion for an injunction, both preliminary and permanent, before a three-judge district court as required by 28 USCA 1337, 28 USCA 2201, 28 USCA 2284, 28 USCA 2401 and 2403, et seq., 28 USCA 2281, 28 USCA 2283 and 28 USCA 1341, but not limited to, and Petitioner-plaintiff requests that the Chief Judge of the United State Court of Appeals for the Sixth Circuit be notified pursuant to Section 2284, Title 28 of the United States Code, of the presentation of petitioner-plaintiff's application for an injunction in order that the necessary designation of judges for said court may be made.

That the Federal Home Loan Bank Board and its Director and/or Official and/or Officer in Charge is a necessary and indispensable

party as Co-Defendants in this cause of action, and whereby said Federal Agency, by their counsel the United States Attorney, have filed a motion to dismiss. Further, on December 13, 1979, Petitioner-plaintiff sought concurrance from Mr. Samuel Behringer, Assistant United States Attorney, as to an injunctive order, and which said concurrance was refused.

That Petitioner-plaintiff herein (actually Defendant-mortgagor in wrongful foreclosure) filed her Motion for Preliminary, Permanent and Eternal Injunctive Relief and Brief together with the Complaint in this cause, and Co-Defendants-members of the Michigan Supreme Court have filed a motion to dismiss. The members of the Michigan Supreme Court are individual persons even though they are Michigan State officials. Petitioner's allegations against the Michigan Supreme Court members are contained in Count 10. (requesting) INJUNCTIVE RELIEF AGAINST MICHIGAN SUPREME COURT JUSTICES, and which more broadly and affirmatively alleges acts in an unconstitutional manner, absent of their official cloaks, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and in violation of 15 USCA 1 and 2, et seq. (Sherman and Clayton Acts sections 1-7 and 12-27).

WHEREFORE Petitioner-plaintiff (defendant-mortgagor in wrongful foreclosure) prays that:

1. That the said Co-Defendants Federal Home Loan Bank Board be required to answer to plaintiff's complaint, and that their motion to dismiss be denied.

2. That the said Co-Defendants members

of the Michigan Supreme Court be required to answer to plaintiff's complaint and their motion to dismiss be denied.

3.- That jurisdiction be taken by a three-judge court pursuant to 28 USCA 1337 and 28 USCA 2201, 28 USCA 2284, 28 USCA 2281 (unconstitutional state statute involved), 28 USCA 2282 (federal statutes and regulations promulgated under the provisions of 12 USCA 1461, 1464, et seq., repugnant to the United States Constitution), and 28 USCA 1341 (collection of state taxes in repugnance to the United States Constitution) and that a three-judge constitutional court be empanelled and convened to hear and determine this case.

4. That in the meanwhile a temporary and/or interlocutory preliminary injunction be issued by a single judge as authorized by 28 USCA 2284, restraining and enjoining Co-Defendant Federal Home Loan Bank Board, its directors, officials, attorneys, employees, servants and agents, restraining and enjoining them from refusing to issue cease-and-desist orders, pursuant to 12 USCA 1461, 1464, (2) (A) (B), (3) (A) (B) (C), (4) (A) (B) (C) (D) (E), (5) (Q), et seq., and as required consonant with the Constitution of the United States, involving 5,000 or more associations, nationally, who hold million of mortgages where "escrow" moneys or funds are illegally required by said associations, and tending to be violative of 15 USCA 2, et seq., and further, in repugnance to the Fifth and Fourteenth Amendments to the Constitution of the United States.

5. That the court may deem that this case meets the jurisdictional amount of somewhere well over $10,000.00 in value and otherwise, as required in the federal jurisdiction.

6. That in the meanwhile a temporary and/or interlocutory preliminary injunction be issued by a single judge as authorized by-28 USCA 2284, restraining and enjoining Co-Defendant-members of the Michigan Supreme Court, as individual persons, from performing acts in an unconstitutional manner.

7. That if any conditional bond be required and filed by the plaintiff herein that the sum be nominal.

8. That this court grant such other and further relief to the plaintiff consistent with good conscience and in the interests of justice.

/s/ Virginia Cramer,
Petitioner-plaintiff,
Defendant-mortgagor in pro per

Dated:
Dec 17, 1979

Filed December 21, 1979 - No 9-72789
U. S. District Court

PLEASE TAKE NOTICE that Petitioner-Cramer (Defendant in wrongful foreclosure) will make application to this court, the HONORABLE ANNA DIGGS-TAYLOR, UNITED STATES DISTRICT JUDGE, presiding, on January 17, 1980, at 9:30 A.M. in the forenoon, or as soon thereafter as Petitioner in pro per can be heard, for the convening of a three-Judge court, (See Motion and Notice of Motion attached hereto) and that the opposing parties Motion to Dismiss, or Motion to Remand, and Motion for Judgment on the Pleadings be denied:

1. Because of the necessity to restrain and enjoin the Federal Home Loan Bank Board (Washington, D.C.) from refusing to issue cease-and-desist orders pursuant to 12 USCA 1461, 1464, et seq., whereby this court has original and exclusive jurisdiction under

28 USCA 1337 and 15 USCA 1 and 2, et seq., to prevent irreparable injury by unsafe and unsound practices of mortgagee-lending-associations; and for encouraging the widespread use of illegal contracts and the requirement of "escrow" funds in repugnance to the United States Constitution Amendments Fifth and Fourteenth. (Concurrence from the United States Attorney was sought by Petitioner, and which was denied.)

2. Because of the need to prevent irreparable injury and for repugnance to the Constitution of the United States, among other things, to restrain and enjoin the members of the Michigan Supreme Court, as individual persons, from refusing to take affirmative action to correct their decision reported at 401 Mich 252, which violates the provisions of 15 USCA 1 and 2, et seq. (Sherman and Clayton Acts, sections 1-7 and 12-27).

3. Because in the prior action and as reported at 401 Mich 252, the Michigan Supreme Court members, as individual persons, acted in the absence of jurisdiction and are without judicial immunity.

4. Because this court has exclusive jurisdiction under 15 USCA 1 and 2 et seq., and original jurisdiction under 28 USCA 1337, 28 USCA 2201, 28 USCA 2281, 28 USCA 2282, 28 USCA 2284, 28 USCA 2401 and 2403, 28 USCA 1341; 42 USCA 1983, 1985, 1986, 1988,; and further where federal and state action are involved in violation of the Fifth and Four-Teenth Amendments to the United States Constitution.

5. Because, in any event, this federal district court has threshold jurisdiction, at least if not more; and that Petitioner is not collaterally estopped by the denial of certiorari by the United States Supreme

Court in the prior action (reported at 401 Mich 252) where the members of the Michigan Supreme Court were not parties and questions of jurisdiction were not raised; that the denial of certiorari makes no precendent and imports no expression of opinion on the merits of the case in the prior action.

6. Because the federal district court has original and/or exclusive jurisdiction of the subject matter.

7. Because the decision rendered in 401 Mich 252 (prior action) enforces the precise conduct made unlawful by the Antitrust Act enacted by Congress.

8. Because even though your Petitioner was designated as "Plaintiff" in the prior action, and, in part, in this new action, and where she was denied a choice of forum because of the foreclosure by advertisement—action initiated by the mortgagee-Metropolitan Federal Savings and Loan, in reality Petitioner is the Defendant-mortgagor and removal of the state case is appropriate.

9. Because in reality the mortgagee-lending institution (Metropolitan) is the "Plaintiff" where they initiated the foreclosure action and there are grave doubts and controversies as to the "facts" (as reported in 401 Mich 252) and your Defendant-mortgagor has defensive merits of counter-claims against the "Plaintiff-mortgagee-lending-institution."

10. Because Defendant-mortgagor's constitutional rights and guarantees were denied and ruthlessly violated, in said prior action reported at 401 Mich 252.

11. Because "Plaintiff-mortgagee's" foreclosure action and claims are founded on the laws of the United States, enacted by Congress and promulgated by the Federal Home Loan Bank Board under 12 USCA 1464 et-seq and regulations under Title 12, 545.6-1 et seq. specifically pertaining to "escrow" moneys or funds involved in a mass mortgage contract.

12. Because "removal" should be granted where federal claim or right is asserted by the "Plaintiff-mortgagee" as essential to the mortgagee-lending institution's cause of action, to wit: foreclosure on mortgagor's property based upon "escrow" funds only.

13. Because "removal" should be granted where "Plaintiff-mortgagee's' claims are founded on being "bound by (federal) regulations to require said "escrow" funds, but that the many thousands of lending institutions, as mortgagees, are bound to do nothing with said "escrow" funds belonging to the mortgagors, pursuant to Title 12, sections 545.6-1 et seq.

14. Because where Defendant-mortgagor (Cramer) was and still is the Defendant-mortgagor, both in the prior action and in this new action, where she was and is being denied due process of law, Defendant-mortgagor-Cramer may remove the suit (ex parte) to the federal court whenever the federal court could sustain original jurisdiction because of "Plaintiff-mortgagee's" action of foreclosure having been founded on the laws of the United States, and as an essential element of "Plaintiff-mortgagee's" federal issue as evidence by their claim that "Cramer refused to pay escrow," and removal jurisdiction is founded on "Plaintiff-mortgagee's" foreclosure as cause of action.

15. Because the federal district court has exclusive jurisdiction over the subject matter, to wit: the judgment reported at 401 Mich 252 enforces the contract and allows the foreclosure, enforcing the precise conduct made unlawful by the Anti-trust Act, 15 USCA 1 and 2, et seq., in derogation of the law.

16. Because "removal" of the state case is appropriate where resolution of federal issue is necessary.

17. Res judicata may not be sustained where defendant-mortgagor's evidence was not heard and was never permitted to be heard, and therefore Petitioner-Cramer (mortgagor) was denied an opportunity to be heard and present evidence.

18. The document entered by the Wayne Circuit Court (prior) action, on September 27, 1968, is void for lack of jurisdiction, and therefore no jurisdiction was established throughout the said prior action, including the Michigan Supreme Court decision reported at 401 Mich 252, due to the malpractice, negligence, fraud, concealment and deceit of the attorneys (on both sides).

19. Because judgment on the pleadings (or summary judgment) is never proper where there are issues of fact, and as pertaining to issues of conspiracy and obstructing justice.

20. Because the Michigan Foreclosure by Advertisement Statute, MCLA 600.3201 et seq., MSA 27A.3201 et seq. pertaining to "any condition of the mortgage" allowing foreclosure on "escrow" funds for <u>future</u> liabilities of taxes, not yet assessed, not billed, and not due, is state action involved and violative of the Fourteenth Amendment to the

United States Constitution, in repugnance of the Fifth Amendment to the U.S. Constitution, and/or an illegal tying-in arrangement.

21. Because the Michigan Supreme Court decision reported at 401 Mich 252 is state action involved and violative of the Fifth and Fourteenth Amendment to the United States Constitution.

22. Because the Federal Code of Regulations, under Title 12, Real Estate Loans, sections 545.1 et seq. is federal action involved and violative of the Fifth and Fourteenth Amendments, as pertaining to "escrow" funds.

23. Because Petitioner-Cramer's claim for relief and cause of action as to the Federal Home Loan Bank Board, an indispensable party, is injunctive relief for refusing to issue cease-and-desist orders to prevent irreparable injury by the unsafe and unsound practices of numerous mortgagee-lending-institutions involving mortgage contracts and "escrow" funds, and for repugnance to the U. S. Constitution, Amendments Fifth and Fourteenth, while encouraging the wide-spread use of illegal contracts in violation of antitrust laws; and where the federal court has exclusive and original jurisdiction.

24. Because the mass mortgage-contract involved and its effect of illegality and being in violation of federal antitrust laws should be decided in the federal court.

FEDERAL ACTION INVOLVED- FEDERAL HOME LOAN BANK BOARD ENCOURAGES THE WIDE-SPREAD USE OF ILLEGAL CONTRACTS

"The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties. To this rule all others are subordinate. To arrive at a proper interpretation of particular language, the entire contract must be considered." McIntosh v Groomes, 227 Mich 215.

The mass mortgage contract involved, as to "escrow" funds, inhibits, prevents, precludes, and prohibits a mortgagor from complying with governmental laws, such as paying taxes and insurance to protect the security of the property and from commission of waste where the mortgagee fails to adhere to the implied provisions of paying taxes and insurance, and is in derogation of the law, and where the implied provisions are unenforceable, and in conflict with statutory provisions.

> Act 206 P.A. 1893, as amended CL 48 211.44; MSA 7.87 Sec 44. Each property owner assumes the responsibility of administering his property. This includes payment of any taxes assessed as they become due.

See, Contracts, CJS 201; "A contract made in violation of a statute is illegal and unenforceable, and it is usually immaterial whether the thing forbidden by statute is malum in se or merely malum prohibitum." See, Contracts, CJS 191. "An agreement which violates a provision of a statute or which cannot be performed without a violation of such provision ordinarily is illegal and void. It is immaterial whether the contract is directly prohibited or arises collaterally out of transactions prohibited by statute."

In Michigan, real property taxes are assessed, billed and payable in advance. Michigan statutes providing for the subjection of sale and redemption for the enforcement and collection of tax liens for taxes delinquent and unpaid for more than one year after such assessments of taxes are returned to the State treasurer as delinquent, are set forth in MSA 7.104 and MSA 7.105, et seq. A Quick clarification of said provisions of said statutes with the County tax collector's office, reveals that property taxes may remain unpaid for a period of somewhere between 26 and 33 months before a tax sale of land would occur for the collection of such tax liens of the State, and such assessed taxes remain the liability of the title-holder of real property. Thus, the "security of the mortgage" is not jeopardized until taxes are unpaid for 26 to 33 months. Thus, accordingly, by the mortgagee's intent and purpose of collecting "escrow" funds from the mortgagor in advance before taxes are assessed and not billed, and the mortgagee invests said escrow funds for profit and gain, and for self-dealing, the mortgagor gets nothing for the moneys which belong to the mortgagor (the "borrower").

Under Title 12, Real Estate Loans, 545.6-1, et seq., promulgated under the authority of Federal Home Loan Bank Board, Code of Federal Regulations, provisions are as follows:

"545.6 Real Estate loans.

"545.6-1 Lending powers. Any Federal association may make the following types of loans on the security of first liens on improved real estate:

(a) Homes or combination of homes and business property --

(1) Monthly installment loans; flexible payment loans.

* * * up to 75 percent of the value thereof, repayable monthly within 30 years or, if an insured or guaranteed loan, within the period acceptable to the insuring or guaranteeing agency. Provided, That when so authorized by the members of such an association, such loans may be made up to:

(i) 80 percent of the value, if the loan is not an insured or guaranteed loan;

(ii) The maximum percentage of the value acceptable to the insuring agency, if an insured loan;

(iii) 80 percent of the value, plus the amount guaranteed if a guaranteed loan.

* * *

(4) Loans in excess of 80 percent of value. The limitation of 80 percent set forth in (a) (1) (i) of this section shall be 90 percent in the case of any loan meeting the following requirements:

* * *

(iii) The loan contract requires that in addition to interest and principal payments on the loan, the equivalent of one-twelfth of the estimated annual taxes and assessments on the real estate security be paid monthly in advance to the association; * * *

(emphasis added) Therefore, no "escrow" is required on any insured or guaranteed loan. "Escrow" is required on a loan 90 percent of

value, if the loan is not an insured-or guaranteed loan. However, mortgagee-lending institutions mandate "escrow" payments on all home mortgages granted, and currently, even where the downpayment is 50 percent, (where the loan is 50 percent of the value) and the mortgage-loan is almost always insured or guaranteed, and which is contrary to the above regulations, in violation of 15 USCA 1 and 2, et seq. and 15 USCA 2, et seq (Sherman and Clayton Acts section 1-7 and 12-27).

> "Even if * * * contract was bargained for agreement, parties could not contract in derogation of the law, and illegal provisions of such contract, if any, were unenforceable." Skoda v A & W Dist. Co., D.C. Tex 1976, 414 F Supp 1209.
>
> "A violation of sections 1-7 of this title which is per se illegal cannot be justified." Carlson Companies, Inc. v Sperry & Hutchinson Co., D.C. Minn 1974, 374 F Supp 1080.

15 USCA 2 (Monopolizing)

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a felony, * * * "
As amended Dec. 21, 1974, Pub. L. 93-528, Sec. 3, 88 Stat. 1708

> "Generally speaking, section 1 of this title (15 USCA), which forbids all means of monopolizing trade (or commerce) by unduly restraining it by means of contracts and combinations, deals with means while this section (15 USCA 2) which condemns the result to be achieved rather than the form of the combination or the particular

means employed, deals with ends." Forrest v Capital Bldg. and Loan Ass'n., D.C. La. 1973, 385 F Supp 831, Affirmed 504 F 2d 891, certiorari denied 20 S Ct 1980, 421 US 978, 44 L Ed 2d 470.

Where the Code of Federal Regulations promulgated by the Federal Home Loan Bank-Board, may largely be permissive as to so-called "escrow" funds, the necessity to restrain and enjoin the Federal Home Loan - Bank Board from refusing to issue cease-and-desist orders to prevent irreparable injury by unsafe and unsound practices (of mandatory "escrow" funds) and the authority for such cease-and-desist orders is provided, as follows:

12 USCA /1464 (2) (A) "If, in the opinion of the Board, an association is violating or has violated, or the Board has reasonable cause to believe that the association is about to violate, a law, rule, regulation, or charter or other condition imposed * * * or is engaging or has engaged, or the Board has reasonable cause to believe that the association is about to engage, in an unsafe or unsound practice, the Board may issue and serve upon the association a notice of charges in respect thereof. * * * In the event * * * the Board shall find that any violation or unsafe or unsound practice * * * has been established, the Board may issue and serve upon the association an order to cease and desist from any such violation or practice * * * ."

The dire need for a cease-and-desist order is great, immediate and desperately urgent.

THE FEDERAL COURTS HAVE JURISDICTION AS TO SUBJECT MATTER INVOLVING MEMBERS OF THE MICHIGAN SUPREME COURT, AS INDIVIDUALS AND PERSONS, (State officers) WHO ACT WITHOUT JURISDICTION, AS PUBLIC OFFICIALS.

42 USCA 1983 "When a public official acts in an unconstituional manner, his actions are stripped of their official cloak and he may be ordered to perform his official duties in a manner consonant with the constitution; under this legal fiction, the state is presumed not to accede to unlawful actions taken by one of its officials so that an order directed to the official to affirmatively correct his action is not being directed against the State, for purpose of determining whether suit is against a "person" within meaning of this section." O'Brien v Galloway, D.C. Del. 1973, 362 F Supp 901.

Petitioner-Cramer asserts that the members of the Michigan Supreme Court acted in the clear absence of all jurisdiction in rendering their decision reported at 401 Mich 252. (See Petitioner-Cramer's Motion to Void, Nullify or Vacate Wayne Circuit Court Order dated September 27, 1968) Where the Wayne Circuit Court acted in lack of jurisdiction, coram non judice, then the entire "proceedings" following which included 401 Mich 252 lost judicial function, coram non judice.

Moreover, and on the other hand, as stated in 58 CJS, Monopolies, at 87, "One may not invoke the aid of the courts to enforce provisions of a contract which is invalid as in restraint of trade (or commerce) or tending to create a monopoly." and --- "Only where judgment of court would itself be enforcing the precise conduct made unlawful by Antitrust Act is antitrust defense allowed." See, Gutor International, AG v Raymond Packer, Co., Inc. (1974) 493 F 2d 938. Therefore,

the plea of illegality, as a defense to the instant mass mortgage contract where mortgagee (Metropolitan) initiated foreclosure by advertisement (which was not a foreclosure by suit) "the effect of said contract's illegality by virtue of contract being in violation of federal antitrust laws is a matter of federal law which should be resolved in the federal court." Appalachian Power Co v Region Properties, Inc., D.C. Va. 364 F Supp 1273.

REMOVAL OF STATE CASE IS APPROPRIATE AND PROPER

Removal under 28 USCA 1441 (a) (b) and 28 USCA 1443 (1) et seq.

The Supreme Court have amplified the traditional views, and decided that removal can be had under 28 USCA 1443 (1) if it is asserted and "can be predicted by reference to a law of general application that the defendant (defendant-mortgagor-Cramer) will be denied or cannot enforce the specified federal rights in the state courts. * * * Thus, when a denial is manifest in a formal expression of state law, there is a clear ground for removal, as under prior cases; but in addition, there is ground for removal when acts of petitioners are clearly a matter of right." Georgia v Rachel, GA 1966, 86 S Ct 1783, 384 US 780, 16 L Ed 2d 925.

The foreclosure by advertisement, as published, is dated May 23, 1968. Cramer attempted to enjoin the foreclosure in the Wayne Circuit Court on August 12, 1968, where on September 27, 1968, the "Order Dissolving Temporary Restraining Order" was entered, but which is not a "judgment", and it did not direct that further foreclosure proceedings be under the supervision of the court. Therefore, it was not a judicial foreclosure. (See Petitioner-Cramer's

Motion to Void, Nullify and/or Vacate Wayne Circuit Court Order dated September 27, 1968) Cramer's evidence was not heard and the court would not permit Cramer to be heard, in ruthless violation of the due process clause, Fourteenth Amendment to the United States Constitution, and in denial of civil rights.

The Michigan Supreme Court decision 401 Mich 252 is dated October 6, 1977, Certiorari in the United States Supreme Court was denied June 12, 1978. Cramer commenced this new action in the State Circuit Court on July 14, 1978, where the Michigan Supreme Court denied leave to appeal; Cramer filed the removal of state case on July 17, 1979.

Rem oval should be granted if federal claim or right asserted is essential element of "Plaintiff-mortgagee's" federal cause of action and federal issue is evident by "Plaintiff-mortgagee's" pleadings, to wit:

> " * * * her subsequent failure to comply with paragraph 2 of the mortgage concerning payment of escrow and the foreclosure action taken by Metropolitan."

Thus, removal jurisdiction is founded on "Plaintiff-mortgagee's" cause of action, and federal court could have sustained original jurisdiction. See, Appalac;ian Power Co. v Region Properties, Inc. et al, 364 F Supp 1273 (1973).

Further, "Defendant-mortgagor-Cramer" is not estopped from asserting illegality as defense to the contract because of the Michigan Supreme Court decision reported at 401 Mich 252, which allows antitrust defense. Gutor International, AG v Raymond Packer Co., Inc. C.A. Mass 1974, 493 F 2d 938.

The federal question has been resolved by the Michigan Supreme Court decision reported at 401 Mich 252, to wit: "She refused to pay "escrow", and therefore, breached a covenant in a mortgage by failure to perform her covenant the performance of which was a condition to pay "escrow." - However, the Michigan Supreme Court, by considering only partial of two (2) paragraphs in the mortgage contract, where there are nine (9) paragraphs, failed to note that - the paramount intent of the m ortgage contract, when read in its entirety, inhibits, prevents, precludes and prohibits a mortgagor from complying with governmental laws such as paying taxes and insurance on the real property mortgaged, in derogation of the law, and especially so when the mortgagee (lending institution) fails to pay the taxes and insurance when due with the "escrow" funds deposited by the mortgagor. Moreover, where the mortgagee refuses to accept payment of principal and interest without the "escrow", the tying-in arrangement becomes an unlawful combination. In Janich Bros., Inc. v American Dmstilling Co., C.A. Cal. 1977, 570 F 2d 848, the federal court of appeals said,

> "To establish a prima facie case of attempted monopolization, a plaintiff must prove three elements:
>
> (1) specific intent to control * * * or destroy competition with respect to a part of commerce, (money)
>
> (2) Predatory conduct directed to accomplishing the unlawful purpose, and
>
> (3) a dangerous probability of success."

"The phrase 'attempt to monopolize' means - the employment of methods, means, and practtices which would, if successful, accomplish

monopolization and which, though falling short, nevertheless approach so close as to create a dangerous probability of it. * * * In determining whether there was an attempt to monopolize, all of the acts of the defendants should be viewed together." Knutson v Daily Review, Inc., C.A. Cal. 1976, 548 F 2d 795, cert denied 97 S Ct 2977, 433 US 910, 53 L Ed 2d 1094.

In the instant case, the mortgagee-lending institution refuses to accept the principal and interest without the "escrow" funds, by monthly-installment payments; and moreover, the mortgagee (Metropolitan) refused to accept payment of principal and interest unless "excessive escrow" was paid, to fatten their coffers for self-dealing purposes; not to pay taxes or insurance inasmuch as no taxes or insurances were due, none were assessed, none were billed, none were unpaid. Nothing was due and nothing was unpaid.

> "District court properly assumed jurisdiction of action to redress alleged deprivation of civil rights, wherein court's jurisdiction over subject matter was challenged, since court must assume jurisdiction to decide whether allegations state a cause of action on which court can grant relief as well as to determine issues of fact arising in the controversy." (emphasis added) Westminister School Dist. of Orange County v Mendez, C.C. A Cal 1947, 161 F 2d 774.

Here, defendant-mortgagor-Cramer claimed that she had the right to refuse to pay "escrow" where the "plaintiff-mortgagee" Metropolitan failed and neglected to adhere to the implied provisions of the

mortgage contract where they failed to pay the taxes and insurance and allowed said liabilities to become seriously delinquent, repeatedly.

The affirmative defense of res judicata is not available to "Plaintiff-mortgagee-Metropolitan" and Co-Defendant-attorney-William P. Thorpe offers no proof that the "foreclosure" matter was ever heard by a court of competent jurisdiction.

"Res judicata is an affirmative defense - and burden of proof is on the party asserting it." Howard v Green, C.A. Ark. 1977 555 F 2d 178. Defendant-mortgagor-Cramer's evidence has never been heard and was never permitted to be heard as to the foreclosure matter. "The fundamental requisite of due process of law is the opportunity to be heard." Granis v Ordean, 234 US 385, 394, 34 S Ct 779, 783, 58 L Ed 1363 (1914). "The hearing must be 'at a meaningful time and in a meaningful manner.'" Armstrong v Manzo, 380 US 545, 552, 85 S Ct 1187, 1191, 14 L Ed 2d 62 (1965); Goldberg v Kelly, 397 US 254, 267, 90 S Ct 1011, 1020, 25 L Ed 2d 287 (1970).

THE "ORDER DISSOLVING TEMPORARY RESTRAINING ORDER" Dated September 27, 1968, SHOULD BE VOIDED BY THE COURT, on the grounds that the court lacked jurisdiction to enter such order, fraudulently obtained; Cramer's evidence was not heard and was not permitted to be heard; the false allegation of "default in her mortgage" nullifies said order. (See Petitioner-Cramer's Motion to Void, Nullify and/or Vacate Order dated September 27, 1968).

> "Proceedings, which is equivalent of common law suit or equitable action to secure relief from an existing judgment, is independent action and removable regardless of whether or not proceeding sought to be removed is independent in form." Id. Federal Sav & Loan Ins. Corp. v Quinn, C.A. Ill. 1969, 419 F 2d 1014.

In Grummons v Zollinger, D.C. Ind. (1964) 240 F Supp 63, affirmed 341 F 2d 464, the federal court of appeals held,

> "Principle of res judicata may not be invoked to sustain fraud and judgment obtained by fraud, or collusion, may not be used as basis for application of doctrine."

Further,

> "Defense of res judicata would not be available in subsequent action as result of prior action between same parties where plaintiff's right had not been determined in prior action due to lack of opportunity to be heard and present evidence." Williams v Murdoch, C.A. Pa. 1964, 330 F 2d 745. (Id)

The Michigan State courts had no authority to hear or determine as to the matter of foreclosure, unless the foreclosure sale had been set aside. Stewart v Eaton, (1939) 287 Mich Rep 466.

Defendant-mortgagor-Cramer is not collaterally estopped. "Defense of estoppel is affirmative defense the efficiency of which cannot be determined until all facts are developed by an evidentiary hearing." (emphasis added) Collins v PBW Stock Exchange, Inc., D.C. Pa. 1976, 408 F Supp 1344.

DECLARATORY JUDGMENTS, 28 USCA 2208, et seq. (Chapter 151) Creation of remedy. (not involving Federal taxes; not involving U. S. Treasury funds.)

> "In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

STATE ACTION INVOLVED

In Michigan, our own Federal District Court Judge John Feikens, in Gibson et al v First Federal Savings and Loan Association, 347 F Supp 560, 562, D.C. Mich 1973, 364 F Supp 614, affirmed 504 F 2d 826, in speaking of redress to any deprivation of civil rights under color of state law, where state process is used to foreclose mortgages where state action is involved, that court said:

> "Judicial or executive action, combined with private action, has been held sufficient to find action under color of state law, Shelley v Kraemer, 334 US 1, 68 S Ct 836, 92 L Ed 1161 (1948).

But not so here (no foreclosure was involved) for the nexus between the state-action--possible foreclosure and execution of sale by the sheriff and the alleged taking by the defendant--is too remote. To hold that the taking is under color of law would subject every contract or mortgage to constitutional scrutiny. Although

the mortgage in question may present legal questions under federal law, enforcement of that contract by the sheriff does not transform an illegal contract into an unconstitutional one." (emphasis added)

That is the bottom line in the instant case, specifically, that the contract is illegal. Moreover, the assetion of the contract being illegal would never have arisen as a-federal-question if the "Plaintiff-mortgagee-lending-institution", in the instant case, had voluntarily adhered to the implied provisions of the contract, to wit: to utilize the "escrow" funds for payment of taxes and insurance when due.

In Charles MCAllister et al., Respts., v Louis C. Drapeau, Impleaded, etc, Appt. (1939) 92 P2d 911, 125 ALR 800, 808, on the question of relief from an illegal contract, the California Supreme Court, In Banc, held:

> "Assuming that a contract is fraudulent, or against public policy, or illegal, still, where the parties to it are not in pari delicto, and where public policy is considered as advanced by allowing either, or at least the most excusable of the two, to sue for relief, relief may be given to him either against the transaction by setting it aside and restoring him to his original position, or even, in some cases, by enforcing the contract, if executory."
> Citing, Smith v Bach, 183 Cal 259, 191 P 14 Woodham v Allen, 130 Cal 194, 62 P 398; Daniels v Tearney, 102 US 415, 26 L ed 187

In the instant case, the "Plaintiff-mortgagee-lending institution" asserted "We did not sign the contract. We are bound to do nothing with the "escrow" funds."

In Shelley v Kraemer, 334 US 1, the Supreme Court said, "That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court. That principle was given expression in the earliest cased involving the construction of the terms of the Fourteenth Amendment. Thus, in Virginia v Rives, 100 US 313, 318 (1880) this court stated.

> "It is doubtless true that a State may act through different agencies, ---either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the State denying equal protection of the laws, whether it be action by one of these agencies or by another."

"In Ex parte Virginia, 100 US 339, 347 (1880), the Court observed; "A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way."

"In the Civil Rights Cases, 109 US 3, 11, 17 (1883), this Court pointed out that the Amendment makes void "State action of every-kind" which is inconsistent with the guaranties therein contained, and extends to manifestations of "State authority in the shape of laws, customs, or judicial or executive proceedings." Language to like effect is employed no less than eighteen times during the course of that opinion."

"Similar expressions, giving specific recognition, to the fact that judicial action is to be regarded as action of the State for the purposes of the Fourteenth Amendment, are to be found in numerous cases which have been more recently decided. In Twining v New Jersey, 211 US 78, 90-91 (1908), the Court

said: The judicial act of the highest court of the State, in authoritatively construing and enforcing its laws, is the act of the State."

"In Brinkerhoff-Faris Trust & Savings Co. v Hill, 281 US 673, 680 (1930, the Court, through Mr. Justice Brandeis, stated: The federal guaranty to due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government."

"Further examples of such declarations in the opinions of this Court are not lacking." * * * "The action of state courts in imposing penalties or depriving parties of other substantive rights without providing adequate notice and opportunity to defend, has, of course, long been regarded as a denial of due process of law guaranteed by the Fourteenth Amendment. Brinkerhoff-Faris Trust & Savings Co. v Hill, supra. Cf. Pennoyer v Neff, 95 US 714 (1878) * * * "

"It has been recognized that the action of the state courts in enforcing a substantive common-law fule formulated by those courts, may result in the denial of rights guaranteed by the Fourteenth Amendment, even though the judicial proceedings in such cases may have been in complete accord with the most rigorous conceptions of procedural due process." (emphasis added) Erie R. Co. v Tompkins, 304 US 64 (1938) * * * "

"The enforcement of the restrictive agreements by the state courts in these cases was directed pursuant to the common-law policy of the States as formulated by those courts in earlier decisions. Parmalee v Morris, 218 Mich 625, 188 NW 330 (1922). Cf. Porter v Barrett, 233 Mich 373, 206 NW 532 (1925). "The judicial action in each case bears the clear and unmistakable

imprimature of the State. We have noted that previous decisions of this Court have established the proposition that judicial action is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common-law policy. (emphasis added) nor is the Amendment ineffective simply because the particular pattern * * *, which the State has enforced, was defined initially by the terms of a private agreement. State action, as that phrase is understood for the purposes of the Fourteenth Amendment, refers to exertions of state power in all forms. (emphasis added) And when the effect of that action is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of this Court to enforce the constitutional commands.

"We hold that in granting judicial enforcement of the restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand. * * * "

JUDGMENT ON THE PLEADINGS (summary judgment) should be denied where there are obvious issues of fact, involving conspiracy, obstruction of justice, legal malpractice, among many other things.

WHEREFORE Petitioner (Defendant-mortgagor) in wrongful foreclosure) prays that this Honorable Court will:

1. Deny the motions to dismiss.
2. Deny the motions to remand.
3. Deny judgment on the pleadings (or deny summary judgment).
4. That jurisdiction be taken by a three-judge court for all or part of the proceedings.

5. That a temporary and/or interlocutory preliminary injunction be issued by a single judge as authorized against the Federal Home Loan Bank Board and the members of the Michigan Supreme Court, and as set forth in Petitioner's application herein.

6. That this court grant such other and further relief to the Petitioner consistent with good conscience and in the interests of justice.

Respectfully,

/s/ Virginia Cramer, Petitioner, (Defendant-mortgagor in pro per)

Dated:
Dec 19, 1979

(Affidavit attached)

Filed January 11, 1980 No 9-72789
U. S. District Court

FEDERAL DEFENDANT'S COMBINED RESPONSE TO PLAINTIFF'S MOTIONS

The Federal Home Loan Bank Board, by and through its undersigned attorneys, submits this combined response to the several motions filed by plaintiff, Virginia Cramer, after August 31, 1979. The August 31, 1979 motion to dismiss filed on behalf of the Federal Home Loan Bank Board is incorporated herein as if more fully set forth.

THERE IS NO JURISDICTIONAL BASIS TO CONVENE A THREE-JUDGE DISTRICT COURT

Title 28, Sec. 2284 sets forth when a three-judge court is required, the composition of the court, and the procedure to be followed by it. In general, a three-Judge court is to be convened when required by federal statute or when the constitution-

ality of the apportionment of congressional districts or statewide legislative bodies is an issue. 28 USC 2284(a)

A three-judge district court is presently required only in the following types of cases:

(a) When the constitutionality of the apportionment of congressional district or statewide legislative bodies is in issue.

(b) Under the Civil Rights Act of 1964, Pub L 88-352, 78 Stat 241;

(c) Under the Voting Rights Act of 1965, Pub L 89-110, 42 USC 1973(b)(a), 1973c; and the Voting Rights Act Amendments of 1970, Pub L 91-285, sections 203, 303(a), 84 Stat 317, 138;

(d) In an action by the Federal Elections Commission for declaratory or injunctive relief concerning civil matters covered by the Presidential Election Campaign Fund Act or by 26 USC 6096 relating to the designation of income tax payments to the Presidential Election Campaign Fund. 26 USC 9010. An action by the Federal Election Commission, a political party national committee or a voter to implement or construe the provisions of the Presidential Election Campaign Fund Act also requires a three-judge court. 26 USC 9011;

(e) Judicial proceedings with respect to the final system plan under the Regional Rail Reorganization Act, 45 USC 719(b).

Plaintiff Cramer's cause does not fall within any of these types of cases. In this regard, the three-judge district court apparatus was designed to provide such an extraordinary procedure only for

a limited class of cases and therefore convened only when the type of case is presented which merits such treatment. The instance at bar is not such a case.

More importantly, in any case in which an application is made to a federal district court judge to convene a three-judge court, it is settled in the law that the judge presented with such an application must initially determine the threshold question of whether jurisdiction even exists in the federal court. Pine Tp. Citizen's Ass'n v. Arnold, 453 F Supp 594 (D.C. Pa 1978). If the general requisites of federal jurisdiction are not present, it is inappropriate to even consider whether or not to convene a three-judge court. Pine Tp Citizen's Ass'n v. Arnold, supra. If federal jurisdiction is lacking, a single judge to whom a request for a three-judge court is addressed can dismiss the complaint without requesting that a three-judge court be convened. Walker v Gilligan, 487 F2d 508, 6th Cir 1973. See also Gonzalez v Automatic Employees Credit Union, 419 US 90, (1974).

The points of law expressed in Pine and Walker are applicable to the case at bar. The Federal Home Loan Bank Board believes that the jurisdictional defects cited in its August 31, 1979 Motion to Dismiss and remand are correct. This Court should dismiss the Cramer complaint and remand the entire proceeding to the particular State Court from which it was improperly removed.

CONSOLIDATION IS INAPPROPRIATE

On September 20, 1979, Cramer moved to consolidate the removed action 62249 and the prior action 57215 with the "action" designated as 9-72789. This motion is opposed because it is procedurally incorrect

and substantively prejudicial to the Federal Home Loan Bank Board.

Procedurally, Civil Action 9-72789 is the federal district court docket number for the action removed from the Michigan Supreme Court (62249). The exception taken by the Federal Home Loan Board is that upon removal to this Court, Cramer could not unilaterally join new parties such as the Board and the Michigan Supreme Court and could not unilaterally file new complaints without first having obtained prior court approval. Cramer is incorrectly characterizing her improper new complaints as a civil action when the case at the docket as 9-72789 is in fact the removal action.

Substantially, the Board's August 31, 1979 motion to dismiss demonstrates that Cramer has no standing to sue the Board. Chase Savings and Loan Ass'n v F.H.L.B.B., 269 F. Supp 965 (ED Pa 1967). See page 12). Even if this Court treats Cramer's motion to consolidate as a motion for leave to join new parties and to file the previously improperly filed complaints, it will have to resolve these substantive issues. It is respectfully urged that this Court will find that there is not jurisdiction as to the Federal Home Loan Bank Board and a resultant lack of jurisdiction, diversity of otherwise, over the remaining aspects of the case so that remand is appropriate.

Respectfully submitted,
JAMES K. ROBINSON
United States Attorney
BY /s/ SAMUEL J. BEHRINGER, JR.
(P23751) Assistant United States Attorney

Dated:
Jan 11, 1980

Filed January 17, 1980 No. 9-72789
U. S. District Court

OPPOSITION TO FEDERAL DEFENDANT'S COMBINED RESPONSE TO PLAINTIFF'S MOTIONS

Defendant-mortgagor-Cramer in removal of state case, in propria persona, submits this opposition to combined response of Federal Home Loan Bank Board, filed on January 11, 1980, and recieved in the late afternoon mail on Tuesday, January 15, 1980, and incorporating herein pleadings priorly filed, "Cramer" says as follows:

ASK NOT WHAT THE GOVERNMENT CAN DO FOR YOU BUT WHAT YOU CAN DO FOR THE GOVERNMENT - JURISDICTIONAL BASIS

Three-Judge Court - Title 28 USCA 2284 specifies (as amended) that Congress has repealed 2281 and 2282 (28 USCA); the two remaining general statutes that authorize three-judge courts being 2283 and 2284. As amended, 28 USCA 2284 reads as follows:

(a) A District court of three judges shall be convened when otherwise required by Act of Congress, or * * * " (emphasis added)

Note: language following "or" is not applicable herein (relative to apportionment of congressional districts or legislative body) and therefore, we are concerned herein with:

(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given * * * to the Governor and attorney general of the State. * * * (emphasis added)

Therefore, it is clear that a three-judge court may be required by an Act of Congress

where the action is against State officers, even though not involving "apportionment".

> "Determination of issue whether case should be heard by a three-judge district court or a single district judge controls whether appeal from final ruling goes direct to Supreme Court or to court of appeals for the circuit." Willis v Walker, D.C. Ky. 1955, 136 F Supp 181.

> "Where three-judge district court issued temporary injunction restraining state officials from enforcing state law but dissolved injunction on final hearing, * * * " Public Service Commission of Missouri v Brashear Freight Lines, Mo. 1941, 61 S. Ct 784, 312 US 621, 85 L Ed 1083, (rehearing denied)

> "Where complaint formally alleges basis for equitable relief and case is otherwise proper one for three-judge district court, applicability of Younger v Harris must be decided by three-judge panel, not by single judge." (abstention) Tapia-Tapia v Division of Appeals of Superior Court of Puerto Rico, D.C. 1975, 429 F Supp 555. (emphasis added)

Also, see Bjarsch v Di Falco, D.C.N.Y. 1969, 300 F Supp 960

> Retroactive effect.
> "Although former section 2281 of this title requiring a three-judge court to enjoin operation of a state statute on constitutional ground has been repealed, it remains effective as to pending suits." BT Inv. Managers, Inc. v Lewis, C.A. Fla. 1977, 559 F 2d 950

Elements that necessitate convening of three-judge district court are (1) a claim for injunctive relief (2) against a state

officer (3) to prevent enforcement of a statewide statute (4) that is challenged as being unconstitutional in substantial ways. Young v Walker, D.C. Fla 1977, 435 F Supp 1089.

"Although section 2281 of this title is in effect due to nonretroactivity of recent amendment of this chapter, three-judge court is only required when state statute is attacked on grounds that it violates Federal Constitution and when constitutional issue raised is substantial one." Mobil Oil Corp. v Lefkowitz, D.C.N.Y. 1977, 454 F Supp 59.

"District court must take allegations in complaint as true for purposes of determining whether to convena three-judge court; single judge can neither evaluate merits of claim, nor extend its inquiry beyond face of pleadings, but mere formalities of prayer for relief or conslusory allegations to the effect that action satisfies the prerequisites for convening special court do not oblige single judge to certify the action for consideration by three-judge court." Pine Tp. Citizens' Assn v Arnold, DC Pa. 1978, 453 F Supp 594.

And, on the other hand, --- "Regardless of nature of relief sought, single judge has authority to review complaint seeking convening of three-judge court in order to determine whether it states substantial claim and one over which the court would have jurisdiction and that review by single judge includes determination of whether complaint presents justiciable controversy and whether plaintiff has standing." Sharrow v Peyser, D.C.N.Y. 1977, 443 F Supp 321, affirmed 582 F 2d 1271.

The points of law expressed in Pine and Walker, cited by the attorneys for the Federal Home Loan Bank Board, are controverted in Sharrow and Mobil Oil Corp and

Young, above cited. Since there is a very substantial constitutional issue presented in the instant case, the court should not consider Federal Defendant's combined response, as filed January 11, 1980.

"Cramer", defendant-mortgagor has standing to sue the individual member of the Federal Home Loan Bank Board; to wit: Director and/or Official and/or Officer in Charge. Chase Savings v F.H.L.B.B., 269 F Supp 965, (ED Pa 1967) is applicable only to state regulated associations, and inapposite in the instant case. However, even a state regulated association may sue an individual member of the Federal Home Loan Bank Board.

FEDERAL JURISDICTION NOT LACKING

Section 1337 of Title 28 providing that - district courts shall have original jurisdiction of any civil action or proceeding arising under any act of Congress regulating commerce gave federal district court jurisdiction of suit for declaratory judgment and appropriate further relief * * * " Murphy v Colonial Federal Sav & Loan Ass'n, C.A.N.Y. 1968, 388 F 2d 609.

In three appeals consolidated for disposition to declare invalid the formula set forth in merger agreement governing distribution of stock, and to substitute another basis upon which distribution would be made, the parties were Federal Home Loan Bank Board, a sue and be sued agency of the United States, Federal Savings & Loan Insurance Corporation, a sue and be sued Federal Corporation and agency of the United States, appellants, versus Sidney Elliott, Winnie Buckling, Mabel Fergus & John (Beans) Reardon, individually as shareholders Protective Committee, and John Does 1 through 70,000. In previous litigations for declaratory relief, see Elliott v Federal Home Loan Bank Board, D.C. Cal 1964, 233 F Supp 578, and where the jurisdiction

was not challenged under Administrative - Procedure Act, Sec. 10, 5 USCA 1009 (subsequently amended) where the court held that the Federal Home Loan Bank Board did not have uncontrolled discretion and that Federal Home Loan Bank Board actions are judicially reviewable. (12 USCA 1462 (d), 1464 (d). Those cases involved a merger agreement and dissolution of federal associations and/or conversion to State savings - and loan (12 C.F.R. 564.4), the court holding that the parties were not estopped from challenging validity of agreements. (reversed and remanded, 386 F 2d 42, cert den 88 S Ct 1260, 1261, 300 US 1011, 20 L Ed 2d 161.)

In Milberg v Lawrence Cederhurst Federal Sav & Loan Assn., 496 F 2d 523 (1974) the 2nd Circuit Court of Appeals, reversed judgment dism issing action for lack of subject matter jurisdiction and remanded, holding that a violation of regulation 12 USCA 1461, et seq., was sufficient to invoke jurisdiction of the federal court under act giving jurisdiction to district court of any action arising under any act of Congress regulating commerce. (28 USCA 1337)

In an action to enforce regulation of Federal Home Loan Bank Board involving internal affairs of association, City Federal Sav & Loan Assoc. v Robert P. Crowley, Sr., et al (DC Wis 1975) the federal court sustained original jurisdiction under 28 USCA 1331 (a), 28 USCA 1337, as to subject matter jurisdiction, and said,

> "Question of whether a statute or administrative regulation permits maintenance of private cause of action turns on whether provision

allegedly violated was designed to protect complainant from injuries of which it complains and whether implication of such cause of action is in furtherance of provisions' purposes." (12 USCA 1464, 28 USCA 1337) City Federal Sav & Loan Assn. v Crowley, 393 F Supp 644.

Further, in the case above-cited, the court held that the federal district court has subject matter jurisdiction of actions arising under federal common law; and questions of fact are not resolvable on a motion to dismiss.

In Beck v Athens Bldg. Loan & Savings Assn (1974 DC Pa) 65 F.R.D. 691, alleging unlawful combination or conspiracy in violation of Sherman Act 15 USCA 1, et seq., (conspiracy to shift from "capitalizing" to "escrow" method of holding funds collected for taxes and insurance) the court sustained pendent jurisdiction over state claims, and in view of considerations of judicial economy and convenience pendent jurisdiction would be exercised. In that case, on granting mortgagor's motion to file amended complaint (Federal Civil Procedure, Rule 15 (a)) obligating the adding of new cause of action, holding that, "pendent jurisdiction, in the sense of judicial power, exists whenever there is a claim arising under the Constitution, the Laws of the Un ited States, and Treaties made (US Const. Art III, sec 2).

Moreover, where state and federal claims at issue are derived from "a common nucleus of operative fact," accordingly, the federal court has the power to take jurisdiction over the state claims. The allegation of a common-law restraint of commerce (prima facie restraint in the restrictive covenant of the instant mass mortgage contract) can properly

be appended to the Sherman Act claims. Beck v Athens, supra.

On the threshold question of whether - federal district court entertained jurisdiction properly based on state common law, the United States Supreme Court held that the district court properly entertained jurisdiction of the claim based on state law -- see United Mine Workers of America v Gibbs, 383 US 715, 86 S Ct 1130, 16 L Ed 2d 218 (1966) PP 721-729 --- in favor of exercising pendent jurisdiction over the state claims --- and where retention of jurisdiction over the state-law claims will not involve a needless decision of state law --- permitting conclusion that entire action before court comprises one "case" -- P 725 --- pendent jurisdiction is a doctrine of discretion justified by judicial economy, convenience and fairness to litigants -- P 726 --- and that the District Court did not exceed its discretion in exercising jurisdiction over the state law claim. PP 727-279 -- (asserting unlawful conspiracy and boycott to interfere in contracts).

It is respectfully urged that jurisdiction is not lacking, and that, indeed, jurisdiction may be taken under multiple choices, as to the Federal Home Loan Bank Board, individual members, diversity and otherwise, and in the sound discretion of the court. Some meritorious programs produce wrong results. Regulatory whims are usually made or promulgated by unknown persons, exercising patterns of abuse. It always gets complex when the issue of fairness ultimately comes into the picture. "The play is the tragedy "Man", and its hero the Conqueror Worm." Our Lord, Jesus, threw the money-changers out of the Temple --- and no one objected.

For the reasons stated herein and in defendant-mortgagor's("Cramer's) prior pleadings subm itted and incorporated herein as if more fully set forth, removal of the state case is appropriate. Therefore, the motions to remand and to dismiss should be denied.

Respectfully submitted,

/s/ Virginia Cramer,
defendant-mortgagor in
wrongful foreclosure,
In Pro Per

Dated:
Jan 16, 1980

Filed September 18, 1979 No. 9-72789
U. S. District Court

Letter from Corbin Davis (Supreme Court) re: motions pending in Supreme Court are to be deferred until U.S. District Court makes ruling. DD 9-19-79

TRANSCRIPT
Filed February 5, 1980 No. 9-72789
U. S. District Court

MOTIONS

PROCEEDINGS HAD before the HONORABLE ANNA DIGGS TAYLOR, District Judge, United States District Court, 228 Federal Building, Detroit, Michigan, on Thursday, January 17, 1980, commencing at or about the hour of 9:00 a.m.

APPEARANCES:

VIRGINIA CRAMER, Plaintiff,
Appearing IN PROPRIA PERSONA,

WILLIAM R. McFADDEN, ESQ.,
Defendant, Appearing in
PROPRIA PERSONA,

ABEL SELBURN, ESQ., Defendant
Appearing IN PROPRIA PERSONA,

HAYWARD DRAPER, AUSA, for
SAMUEL BEHRINGER, AUSA
Appearing on behalf of Federal
Home Loan Bank Board,

GEORGE WELLER, Assistant
Attorney General, Appearing on
behalf of the Members of the
Michigan Supreme Court

JOHN JACOBS, ESQ.,
Appearing on behalf of Defendant
Allen Counard, Esq.,

WILLIAM THORPE, ESQ.,
Appearing on behalf of Metro-
politan Savings Association,
et al.

Official Court Reporter: Lena Van Smith,
CSR, CP, RPR.

Detroit, Michigan
Thursday, January 17, 1980

THE CLERK: Case Number 9-72789, Virginia Cramer versus Metropolitan Savings, et al.

THE COURT: Good morning, ladies and gentlemen. Today's motions will be entertained by the Court in the following order. I'm advising you now, so counsel can govern your attendance accordingly. The first motion of William McFadden on the judg- of pleadings or summary judgment. Second, Abel Selburn on the judgment of pleadings or summary judgment. Third, Federal Home Loan Bank Board, to dismiss. Fourth, members of the Michigan Supreme Court to dismiss. Fifth, the motion of Defendant Allen Counard to remove and/or

and/or abstain. Sixth, the motion of Metropolitan Savings, et al, to remand. Seven, Metropolitan Savings, et al to dismiss.

The Court will entertain no more than 15 minutes of argument on either side of each motion.

Mr. McFadden.

MR. MCFADDEN: May it please the Court, William McFadden. I am an attorney. I did have the occasion to represent Ms. Cramer, the Plaintiff in this case, at a very late stage in the proceedings.

At the time that I entered this case, the matter was pending before the Michigan Supreme Court and I came in originally in an advisatory capacity, she having indicated to me at that time she was having difficulty in finding this counsel, and that this case had been pending or certain other cases thereto have been pending for considerable periods of time.

I did advise Mrs. Cramer--that I did suggest certain causes of action to her, including the possibility of an action in the Federal Court. I did in fact draft such complaint for her and -- decided that that time she did not want to proceed on that complaint that I had filed and this suit has arisen because of that.

I state that so the Court will be advised, and I will be on the record as showing what my involvement was in this matter.

Mrs. Cramer filed the suit naming several Defendants; all of whom are present in the court today. In her complaint, she makes certain allegations

or conclusions rather -- as opposed to allegations of fact. Certain conclusions as relates to conspiracy, alleges that I conspired with certain other attorneys to in some way violate or affect her rights.

I submit to the Court, I submitted in the answer that I had no contact with any of these other individuals; that all of the actions she referred to occurred prior to the time that I began any representation whasoever; that the statements that she has made in her complaint are raw conclusions of fact. Raw conclusions, they are not supported by any allegations of fact, whatsoever.

My motion is relatively brief. I will not repeat it to the Court at this time. I have set forth a paragraph. Therein I have alleged that in none of those paragraphs that she makes a single allegation supported by fact which would be proper, a proper basis for this complaint against me, and, therefor, I move the Court at this time to dismiss the action as it relates to me.

I have nothing further to say, Your Honor.

THE COURT: Did your motion not also speak to jurisdiction?

MR. MCFADDEN: The motion -- I beg pardon, speaks to jurisdiction in that there is no diversity of citizenship and no other basis that I can find for this action against all of the defendants, and especially against me.

THE COURT: Thank you, Mr. McFadden. Mrs. Cramer, do you wish to respond.

MS. CRAMER: Well, just very short and briefly in answer to Mr. McFadden's oral argument. The allegation isn't that there was a communication conspiratorily, effort between the attorneys; it's just that the attorneys, per se, it appears to me, want to pursue the issues on entirely the wrong road.

Mr. McFadden, for one thing, insisted that it was a mutual covenant, although as the mortgage -- Court understands, in question, is unenforceable; how can it be a mutual covenant if it's unenforceable.

So it just seems as though the attorneys, including Mr. McFadden, that I have engaged the services of, approached the whole case the wrong way, and -- in my opinion.

Diversity, it is not required in all cases. I think Mr. McFadden is erroneous in thinking that diversity, in his case, or him being a defendant is required. I don't think diversity is required.

I didn't hear a lot of what Mr. McFadden said. That's what I caught; that's my response.

Thank you.

THE COURT: Maybe, Mrs. Cramer, maybe you would hear more if you would sit at the front end of your counsel table instead of the rear.

MS. CRAMER: I've got a lot of loot to move.

THE COURT: Well, better that you move than not be able to hear.

MS. CRAMER: Well -- thank you.

THE COURT: Is Mr. Selburn here? Are you arguing on behalf of Mr. Selburn? Are you Mr. Selburn?

MR. SELBURN: Yes, ma'am.

THE COURT: Proceed.

MR. SELBURN: May it please the Court, I just wish to make a few brief statements to supplement an argument I presented in the motion.

Mrs. Cramer came to me in the fall of '68. I appeared with her in court. I prepared pleadings which copy was furnished to her. And filed with the Court, though, there was no record of a filing. I can't imagine that she was prejudiced. We came to a parting of the ways in early 1970, and since that time, I have not been a party to this action. At our parting of ways , a grievance was filed. There was investigations and a hearing and the matter was disposed of. The only contact that I have had with any of the other attorneys named in this matter, I met with Counard in a diverse action, not relating to this case in any manner. I don't think we ever met, personally. Mr. McFadden and I talked after service of this process and according to Mrs. Cramer, each of the attorneys used the wrong approach.

If there was error of judgment, and I deny that, these are not grounds for a case in the Federal Court, whasoever. The grounds would be based on the diversity of citizenship. There is no diversity.

The claim of conspiracy; there is no conspiracy. She pleads conclusions rather than facts. She says we failed to pursue the issues after I was dismissed. I believe Mr. Counard took this matter through the court, including the Court of

Appeals and the Michigan Supreme Court.

So, I, myself, feel that there's no role in this matter. I understand that there have been other cases filed against other attorneys in this matter in the Wayne County Circuit Court and there's a motion to remand. I'm not a party to that. I don't know that I'm a party to this; and I respectfully move the Court to dismiss.

THE COURT: Thank you.

Mrs. Cramer.

MRS. CRAMER: Your Honor, it's true that Mr. Selburn was the first attorney that I hired on this and that was because of the insistence of the Wayne Circuit Court Judge who was first assigned in this case. I was not permitted to be heard without an attorney. And, so, almost immediately, I did hire Mr. Selburn. Mr. Selburn made one appearance in that case, on September 6, 1968, for oral argument.

As the transcript shows, before the Honorable Thomas J. Murphy, Circuit Judge of Wayne County, who is now deceased.

Mr. Selburn filed absolutely no pleadings. It's true he did furnish me with copies of pleadings, but none were filed in the Court.

Subsequently, I filed a grievance against Mr. Selburn with the State Bar of Michigan. The Grievance Board. And they were very cooperative in helping me to regain or recover monies that I had paid Mr. Selburn.

I had checked the docket in the Wayne Circuit Court. There were no docket entries of pleadings purportedly to have

been filed by Mr. Selburn on my behalf.

The Defendant Metropolitan Savings and Loan and their attorneys never received any copies of any pleadings. They were never served. There's nothing on the record in the Wayne Circuit Court of any pleadings filed by Mr. Selburn.

I don't think they lose pleadings that easily in the court.

And here again, I don't think diversity pertains to Mr. Selburn. And, as -- I'm not a lawyer -- sometimes I can't tell the difference between fact and conclusion. What -- Whatever it is, I think I responded to Mr. Selburn's pleadings in this case very thoroughly and I am alleging that he deceived me, claiming to represent me, claiming to have filed pleadings, and while I was paying him money, he was not representing me, because there were no pleadings filed in the court.

And as a matter of fact, I was left to my own resources and how I could save my property. And it was a very traumatic thing, with me, at that time. I'll never forget it.

Well, I realize that Mr. Selburn may have had other cases, as a matter of fact, he was representing another lady that I knew. But Mr. Selburn had actually ignored the case for all the time that he was supposed to have been managing it. Which was almost 18 months. And I was going to Mr. Selburn's office frequently to pay him more money. As the record shows, nothing has ever been filed by Mr. Selburn. And all that time, I was being led to believe by Mr. Selburn that he was handling the case. On my behalf. But which he wasn't.

— I'm pretty upset -- this whole thing -- I think from the beginning the faults lies initially in how the case was handled and it just seems to snowball all the way along the line and it just seemed to me that -- that the attorneys that I hired after that just covered up for the initial misrepresentation.

And this case has been going on for 12 years. Almost 12 years.

When I filed the grievance against Mr. Selburn with the State Bar, I showed the attorney at the State Bar the pleadings, that copy of which was a cover letter that Mr. Selburn had sent me and I think it was conclusive right there, you know, after the case was about 18 months old. That I went to the Grievance Board of the Bar Association. And I think it was confirmed by the State Bar that there were no pleadings filed by Mr. Selburn; none whatsoever. Not one scrap of paper. Thank you.

THE COURT: Thank you.

Federal Home Loan Bank.

MR. DRAPER: Your Honor, my name is Howard Draper, Assistant United States Attorney instead of Mr. Samuel Behringer who is the instructor this week at the Attorney-General Trial, Advocacy Trial in Washington.

Mr. Behringer has filed several pleadings, probably the most extensive of which was filed on August 31, 1979, which is the motion to dismiss with a brief supporting it. I don't think there's any need to go over the various different grounds that are set out in that brief which I assume this Court has had a chance to look at. I might make two basic points.

First of all, in the brief, there is an argument made which does, as to this particular Defendant, completely dispose of the matter, as well as other argument, as well as cases. The Plaintiff cannot sue the Federal Home Loan Board. This Court --

THE COURT: I'd like to hear about the jurisdiction.

MR. DRAPER: The second point concerns jurisdiction. I might add, in that regard, that the Court can, under Rule 12(h), can raise on its own motion. That is not fatal to the Court dealing with the matter of jurisdiction, itself. However, I believe most of them have raised various jurisdictional arguments. When we're dealing with the Pro Se Plaintiff who feels wronged and a Pro Se Plaintiff who has some misconceptions about what the court system can do, maybe have some fantasies about it, you know, that are very real to her about what is going on to her and she's being wronged and somehow the courts are going to step in and perform magic or do something, and this happens a lot and I'm sure you're aware and this case comes up a lot, particularly with the United States and sometimes defendants. It's hard to deal with jurisdiction, because there's so many technical flaws involved; it's hard to get a handle on it.

The basic flaw that is--behind a whole host of technical flaws that Mr. Behringer sets out is that the Plaintiff can't remove an action. This Plaintiff has run an action all the way through the United States Supreme Court, through state court systems, run another action all the way up, basically same thing, to the State Supreme Court, and then -- hard to know why -- I cannot fathom why I -- she pleads her

lawyers were, the State Supreme Court-Judges were wrong -- decides for whatever reason, maybe the Federal Court will help out, remove it.

We can argue this in terms of the statute which says clearly, something can be done by defendant in the action. But we're dealing with the basic problem here. She can't remove her own action. Certainly, you can't remove an appeal. She was appealing a State Court judgment. This Court has no jurisdiction to review a State Court judgment. That jurisdiction is granted to the Michigan State Supreme Court. And if it is wrong, to the United States Supreme Court.

She has a Federal review; she doesn't have a Federal review in this court -- possibly, somehow, this action that she filed, a new complaint in this court -- but she didn't file a new complaint in this court. She didn't purport to. She purported to remove several complaints filed, several different things. I know Mr. Behringer set out two complaints,-- really one complaint and a second complaint is another complaint with several pages missing at the end, in this Court.

Again, we have -- at that point, we have really a fundamental thing going on here. We have a whole bunch of new defendants who have been added to removal action about -- I believe -- and I -- the reason I don't want to go beyond that, we at that point get into a never-never land of technical problems. Technical procedural problems. Mr. Behringer has set out several of them in his briefs in terms of -- I mean, basically of how you look at what's done there. Could be service problems; a lot of different things. I think for this Court's purpose,

it's enough for this Court to know that it does have limited jurisdiction; that there is a burden on the plaintiffs in all actions to plead jurisdiction and to show jurisdiction under -- unless the Plaintiff can point to a particular statute that gives the Court jurisdiction in Federal Court, then they have jurisdiction. In State Court -- but not in Federal Court.

Furthermore, unless they can show different statutes that point out to sovereign immunity -- this Plaintiff has -- the only statute has been pointed to here, really, considering jurisdiction, that would take the action out of the Michigan Supreme Court, is the concept of removal, and that statute will not give Federal Court jurisdiction over an action that was in the Michigan State Supreme Court.

And concerning treating this as a new action against all these new Defendants, there are not only technical problems concerning service, of process, and other technical problems to bring such an action, but she also does not have a claim against any of these Defendants, even if she had brought a new action.

As to the Federal Home Bank Board, it's not exactly clear what this Federal action is she is bringing this action under. What statute is supposedly being where she's been wronged. You heard the State Defendant and I'm sure you'll hear more talk about diversity.

In our case, there are problems, basically -- and I think really the basis the Court has to deal with it in there is very clear case law. She cannot sue the Federal Home Loan Bank Board on any basis, on any statute. I think that

As a result, unless this Court wants to pursue a particular angle on it, on which I'd be glad to, I think it's the time to clear it up, it's not doing the Court any favor and the Plaintiff any favor to go on and on and on and drag more lawyers in and in, an in. I think we ought to deal with it.

THE COURT: Thank you, counsel.

Mrs. Cramer, do you wish to respond?

MS. CRAMER: Your Honor, I would say to the Court, that the Federal Home Loan Bank Board are indispensable parties in this issue. And the statute that I rely on is dealing with restraint of commerce. Under the anti-trust laws. I think I've been quite blunt in my pleadings, that they encourage the widespread abuse of illegal contracts. That's the stores in which the mortgagee lending institutions claim that they're bound by Federal Regulations to require escrow. It's mandatory. Lending institutions make that very clear. So the Federal Home Loan Bank Board is - involved and perhaps they're not responsible for this allegation that they're or whatever that they, lending institutions claim that they're bound by, Federal - Regulations to require escrow as a mandatory thing. So the Federal Home Loan Bank Board actually is an indispensable party, because that's where the issues stem - from, is in the Code of Federal Regulations promulgated by the Federal Home Loan Bank Board dealing specifically with so-called escrow funds paid on a mortgage contract.

I received a pleading on January 15 which was dated, filed in this court on January 11, and in this short time, I attempted to respond in opposition to it.

And you'll have to forgive me -- I get so angry in this whole thing at times, and it comes out in my pleadings -- our Lord Jesus, threw the money-changers out of the temple, and no one objected -- I don't know why the Federal Home Loan Bank should object. And as far as an individual suing on -- well, I guess it's called a private action or private interest, against the Federal Home Loan Bank Board, I think I made that clear in my pleadings. Frankly, I can't find that particular one right now -- maybe it I search for it while somebody is speaking.

But, also, to the extent of which, in promulgating the Code of Federal Regulations, that the lending institutions rely on as their source, if that's the nub of the issue, then the Federal Home Loan Bank Board cannot escape the fact that they are an indispensable party.

It was my impression and I've been told for the last 25 years that anybody can sue anybody. 'Cause at times I wondered why I was sued. And that was just a broad statement that I got from lawyers down the line. Anybody can sue anybody. I think possibly, in what I've tried to draw out to the Court in the several cases cited, the Federal Home Loan Bank Board has been sued by individual parties.

I show cases here in this hurriedly prepared memorandum shere -- I'm looking for it, Elliott v Federal Home Loan Bank Board, and those were individual people. So they sought to -- declaratory relief.

Seems to me, in reading that case, in the previous litigation on that same case, jurisdiction wasn't even challenged and it's possible that they relied on the Administrative Procedure Act, Section 10, 5 USC(a) 1009. But not being an expert in this, I can't say for sure.

But I've also pointed out to the Court in the hurriedly prepared memorandum that the threshold question of (sic, jurisdiction) the Federal District Court could entertain jurisdiction properly, and believe me, I don't know everything that is underlying in this case, but it seems to me as though the attempt is being made to slough it off back to the State Court where the State Court has already resolved the issue. Based on the State common law.

And I'm citing United Mine Workers of America v Gibbs, that's 383 US 715, where the United States Supreme Court ruled in favor of exercising pendant jurisdiction over State claims, and where retention of jurisdiction over State law claims will not involve a needless decision of State law; permitting the entire action before the Federal Court. Just based on the one, one short premise of the evidence is going to be the same. The evidence is — not going to change under any circumstances. And where it comprises one case and where the evidence will remain the same, — for whatever issue is before the Court -- and it's -- it seems to me that pendant jurisdiction is a doctrine of discretion, justified by judicial economy, convenience, and fairness to the litigant.

And I'm -- I'm very adamant in my belief that the Federal Home Loan Bank Board is an indispensable party; otherwise an issue will never be resolved, never, not for an eternity.

I sought injunctive relief or suggested to the Court that an injunction is proper. But not to enjoin and restrain them from performing that they're supposed to be performing, but to enjoin them and restrain them from refusing to perform issues, cease and desist orders, and so that an affirmative action which I think

should be compelled by the Court. That's why I brought the Federal Home Loan Bank Board into the case from the beginning in the Federal action. They were not parties to the State action.

And also, as I recall, I don't know whether it's proper to ask counsel for the Federal Home Loan Bank Board, but it seems to me, in my search in the last few days, that -- that the Federal Home Loan Bank Board, by act of Congress, has been subjected to numerous reorganizations. I ran across number 1 and number 3 reorganization. I looked for number 6, which I think the attorney who prepared the pleadings, other than this gentleman, Mr. Samuel Behringer, just touched briefly on whether or not the Federal Home Loan Bank Board is a suable independent agency, but I think with the -- with the reorganization that occurred in that second session of Congress in 1966, that they are now a wholly owned government corporation, of which the Federal Home Loan Bank Board is part of.

I think the way the amended statute reads is that the Federal Home Loan Bank Board is included in that wholly owned -- that's w-h-o-l-l-y, not h-o-l-y, government corporation. It also includes the Federal National Mortgage Association.

I can submit a brief on this.

It's just that I ran across it in just the last couple of days and I'm pretty sure that's correct. And whatever, whatever the position they were prior to 1966, and where there's -- I have cited case law here where they are an entity that can be sued or can sue or be sued; in the -- in that amended statute enacted by Congress, subsequently in the early part, I think,

May of 1967.

Congress also clarified it, that inferring that whatever position the Federal Home Loan Bank Board was before 1966, it didn't change after 1966.

So I submit something more, you know, more definite in writing -- may I, please?

THE COURT: I don't think that will be necessary on this point. I think your time has run on this motion.

MS. CRAMER: Thank you.

THE COURT: Members of the Michigan Supreme Court, Motion to Dismiss.

MR. WELLER: Your Honor, my name is George Weller, Assistant Attorney General, representing the members of the Michigan Supreme Court. We have to remember that this dispute is basically between Mrs. Cramer and Metropolitan Savings and Loan Association, over payment of escrow account and subsequent foreclosure and then there was a redemption. Various motions have been made. One is the lack of jurisdiction by this Court, because Mrs. Cramer seeks to reverse, void, or correct the decisions of the Michigan Supreme Court that have been issued in 401 Michigan 252.

Well, what she's really seeking is appellate review of the Michigan Supreme Court; and this Court does not have appellate review of the Michigan Supreme Court. That is the United States Supreme Court. Cert was sought and denied.

Insofar as she seeks damages, of course -- justices were acting in judicial capacity and they would be immune under Stump

v Sparkman.

In addition, we have Collateral Estoppel question of fact that was put in issue; there's been a final judgment and so--she's trying to raise a dispute against --.

The last matter is this question of scandalous matter. She has asked to have the Michigan Supreme Court restained and enjoined from rendering decisions and opinions due to mental disability of the justices. She has said that the justices are mentally disabled; that they border on insanity; they condone fraud, they have no regard for the security of the State; and they are voluntary advocates of misconduct and fraud. That's totally scandalous.

So, for lack of jurisdiction, immunity, Collateral Estoppel, and scandalous matter, the justices ask that this matter be dismissed.

THE COURT: Thank you, counsel.

Mrs. Cramer.

MRS. CRAMER: I can't find the -- my folder on the Michigan Supreme Court, so I'm talking without any material here in front of me in writing. Nothing. I -- when I prepared those pleadings, I was hotter than a pistol under the collar because of the certain instances that -- incidents that occurred between Mr. McFadden and myself. I also amended, subsequently, my pleadings, that I don't -- I don't mean a reversal, I need a reformation of that decision. I'm not familiar with how to do it, but I'm going to keep trying, whatever it is.

There are false reportings in those decisions. False facts. And I don't think that my pointing out that the facts are false are scandalous. I haven't used any dirty words in the pleadings. Not yet.

My feeling about that decision is, that perhaps as a lay person, I don't understand it, but at the same time, I think it's a crucial thing to experience, to see all these false facts in an opinion, and a person just thinks, oh, my gosh, we've got a crook in court. We've got crooked judges. Crooked justices. That's a reaction.

I'm being very honest here because I never learned to be any other way. The facts are wrong. I pointed that out in detail in my petition, Writ of Cert to the United States Supreme Court, which was denied.

The denial petition for Writ is not an expression of any opinion; so it means nothing. I don't think that the denial of the petition of Writ of Cert should be considered an Estoppel of any sort.

If I have another road to go, another recourse, eventually I may have to get back up to the United States Supreme Court, and I hope I'm in the position to give them a big earful. I just don't know how a decision can be properly written with false facts. And that's what it comprises of. And if -- I don't think that that should be termed as scandalous in the same way that it could be stricken from the case. It's all relevant. It is all a related instance or incident or consequence to the whole issue and there's really just one issue, a wrongful foreclosure; and that's how

it started.

And other than that, I'll stand on the written pleadings that I've submitted to the Court.

THE COURT: Thank you.

MRS. CRAMER: thank you

THE COURT: Mr. --

MR. JACOBS: John Jacobs, on behalf of Allen Counard. Your Honor, this is for us what amounts to attorney malpractice action. It has been in litigation, an act of litigation in Wayne County Circuit Court. Mr. Counard is one of the lawyers appearing here today, who at one time or another represented Virginia Cramer in the matter in some fashion.

Like the other lawyers, Allen Counard has been sued and we have made a motion for remand of these pleadings and to request the Court to abstain until the Wayne Circuit case has been adjudicated against us. We think that frankly for us the most appropriate response.

I am in complete agreement with all of the other defense motions I've heard today and anticipate hearing after me. We join in the motions and I take it that in fact -- I take it, on the merits of them, that the -- they are all correct; I don't see anything frankly that I can indicate to the Court that anything erroneous about any of them.

My motion is filling out the procedural gap that I didn't see the other Defendant attorneys raising, technically, on the record; there's no motion to remand. Insofar as the case is concerned against

those Defendants, that has -- have as yet not actually gotten their dismissal in the Wayne County Circuit Court action; that's the reason for motions for remanding.

This action has been pending in State Court for 11 years. Against us for two years. It has been adjudicated. This would now be the third piece of litigation arising out of this incident. It -- I perceive this case to be like so many -- like a line of so many smaller and smaller mirrors and yet although the case may become infinitesimally small, it will always be around. I think that's an appropriate reaction for the Court. I think it's my job as an attorney to say so.

It strikes me that, insofar as the non-governmental State Defendants are concerned, I'm taking that to the justices of the Supreme Court, it's apparent that as to all of these attorneys I see here, for example, Mr. MCClintock, I see the law firm Richards & Denyer, that McClintock -- I take it on behalf of these attorneys, that have been served, McClintock, Mr. Richards, Mr. Denyer, the McClintock firm, Michael Doelle and William Thorpe, and Abel Selburn, Bill McFadden, I think that's all the attorneys, Your Honor, that this Court is aware, this is essentially 1983 or it is by the third parties, a 1983 action. We are private attorneys. These individual attorneys I have named are private attorneys; no State action against those lawyers.

This lawsuit is ill-advised, under 42 USC 1983 and the provisions of 28 USC 1343. Does not have applicability. As is apparent.

Most interesting statements I heard Mrs. Cramer make, to say, there is an

attempt to slough this off, direct quote if I may, attempt to slough this off to the State Courts where it has already been resolved.

That is excruciatingly true. It has been resolved several times. Granted, not to Mrs. Cramer's satisfaction. But that is no reason for this litigation continuing 11 years, over and over and over again.

My motion is a very narrow motion. It's asking the Court to simply, as to my client Counard, the only one I represent, that we have a matter in Wayne County Circuit Court that is pending there; it is also of the attorney negligent malpractice causes of action that this Plaintiff claims against my client Allen Counard -- more than that, she cannot have -- he's a private attorney, there is no State action. As such to the extent that all other Defendants have moved for dismissal; I make that motion, also. I suggest, also, that these private attorneys -- maybe I'm presumptuous, but I think all would agree with my theory, that all of these private attorneys, to the extent that they are, or are not named, this matter is pending in State Court, or has been adjudicated there and Res Judicata affects us there.

I think Mr. Selburn and Mr. McFadden are not named in that case, so I don't think they join such a motion. We are named and, say this matter is pending elsewhere, and for -- a good portion of this case had been adjudicated elsewhere.

Under those theories, Your Honor, and pursuant to my brief, which was filed with the Court sometime back in July and August, we make our motion for dismissal,

based upon the abstention doctrine of the United States Supreme Court, the doctrine as in Huffman v Pursue, in the United States Supreme Court.

Any questions, Your Honor?

THE COURT: No, counsel.

Mrs. Cramer.

MRS. CRAMER: Your Honor, because it just flitted through my mind, right now, that Federal Home Loan Bank Board seems to make a big thing out of what they are trying to term as two complaints. I explained that to Mr. Behringer over the telephone. I -- before he filed his response to my motion. I told him I didn't have a stapler that was heavy enough to go through all of the papers so I just divided them in two sections. It's --

THE COURT: Thank you, Mrs. Cramer. You may go on with this Defendant's motion.

MS. CRAMER: All right. Anyway. Mr. Counard was the second attorney that I hired and it seems to me as though it's a very irregular situation where you never get a day in court. I think that that's possibly the primary reason why the personnel of the courts, mainly the judge the -- want a litigant to hire a lawyer, so that presumably the case will be handled properly. I'd like to go on that presumption, anyway, but I've never been heard. I've never been allowed to testify as to the foreclosure matter. Nothing. Not one word. At anytime that I made an attempt to mention even the word, foreclosure, it was objected to all the way down the line.

Seems to me, from the research that I've done, it also -- it also hinges or stems back to the first order that was entered by the Wayne Circuit Court as a result of which, where I was misrepresented by Mr. Selburn. And then Mr. Counard, I feel did not take the proper steps to remedy that situation, because we're always faced -- Res Judicata, everything was Res Judicata. Couldn't be heard on anything. Metropolitan's defense at every step along the way was Res Judicata. I've never been heard. I've never had a day in court.

I pointed out in my pleadings, specifically where I think Mr. Counard was negligent in representing this case and he, too, argued on the issue that it was a mutual covenant. The mortgage contract was a mutual covenant.

Now, the Michigan Supreme Court has not even indicated that it's a mutual covenant and, like I say, I'm sure it's because I'm not experienced in the law that I'm -- but I'm doing the best I can in my research; and I do feel, now, subsequently, and since what I have researched, after the Michigan Supreme Court decision, more recently is that I have an anti-trust defense. And I feel as though that is the way the case should have been handled from the beginning, on the validity or illegality of the contracts; not as a mutual covenant or not as anything that was enforceable against the mortgagee, because it isn't enforceable against the mortgagee.

It may be termed as a unilateral contract, but at the same time, from what I can gather through my research, as I say, I feel as though a definite anti-trust defense. And this is the way I think

it should be pursued in the Federal Court. And whether I'm competent to do it, I guess not, but I'm going to try real hard. Anyway I can. Even if I have to get back up to the United State Supreme Court. If I have to crawl up there. I telephoned them many times.

Well, I'm sorry to get emotional about this. I really am.

Thank you.

THE COURT: Defendant Metropolitan Savings Association.

MR. THORPE: Your Honor, William Thorpe for Metropolitan Savings Association and McClintock, Donovan Carson and Roach and Defendant named as co-Defendants.

Your Honor, first of all, as to the Defendant Metropolitan Savings Association who was a prime Defendant in the case, it's important to realize that this case started in 1968; was litigated by Mrs. Cramer through some 10 years in the State court. I have attached copies of pertinent appeals, opinion, copies of the Michigan Supreme Court matter, it ultimately went to the United States Supreme Court; Cert was denied. Shortly thereafter, Mrs. Cramer filed substantially the identical complaint in the State Court.

MS. CRAMER: Objection, Your Honor, please. I'd like to enter a standing objection to anything that Mr. Thorpe says. It's been a problem for --

THE COURT: Mrs. Cramer --

MS. CRAMER: For all the years --

THE COURT: Excuse me. Mrs. Cramer, as counsel, he is entitled to argue his case just as you are entitled to argue.

MS. CRAMER: I think everyone, including the Court, appreciates it if Mr. Thorpe wouldn't latch off onto erroneous things.

You know, I think that's only been -- fear -- this situation in this whole case --

THE COURT: Mrs. Cramer, please be seated and permit counsel to conduct the argument; and for you to express yourself in response.

MR. THORPE: Your Honor, as I say, Mrs. Cramer filed substantially the identical complaint in the State Court. That complaint was essentially to the motion, predicated upon Res Judicata. The order was entered by Judge Farmer on September 8, 1978 dismissing Mrs. Cramer's complaint. She then took an appeal. And the matter now stands somewhere in the Michigan Supreme Court. She then filed this, alleging substantially the same facts, identical transactions, attempts to have the case in which she is obviously the Plaintiff removed to the court; convoluted reasoning in attemptin to say that she's the Defendant, is pure nonsense.

This case, if not dismissed, should be sent back to the State Court where it properly belongs.

As to these persons named under the heading, co-Defendants, McClintock, Carson, Donovan, and Roach, those persons represented those Metropolitan Savings Association during the course of litigation. By way of comment, Mr. McClintock is deceased. Mr. Doelle is no longer with the firm. Those persons represented

Savings Association. Essentially brought malpractice action in the second State Court case. Those persons never represented Mrs. Cramer. Never would represent Mrs. Cramer; and by the same order issued by Judge Farmer, those persons were dismissed.

She included them in this action. The matter belongs in State Court where it should be sent.

Your Honor, we request that the matter be sent back to State Court, or in the alternative, that it be dismissed.

By way of comment, I join in the other Defendant's motions that are properly brought.

THE COURT: Just a moment, counsel. I have a question. There are two motions filed by Defendant Metropolitan Savings Association. Are all the parties participating in the motion, in the motion to remand that are participating in the motion to dismiss and vice versa?

MR. THORPE: Yes.

THE COURT: Thank you.

Mrs. Cramer.

MS. CRAMER: It's always been just one action, Your Honor, on the foreclosure. And as a result of which, since I've never been heard, never had a day in court on the foreclosure, the case has snowballed into other things, including the attorneys that I hired, and I think a person has a right to sue another attorney that didn't represent that person, that certain person, if they can point out where fraud has been perpetrated upon the

court.

For one thing, the first order that was entered in this case by -- as I said before, Judge Thomas J. Murphy, now deceased, it was an order dissolving the temporary restraining order; it wasn't even a final order that could be appealed, from what I've learned since. I think I'm correct on that. And at the same time, it purportedly -- mortagor Virginia Cramer to be in default of her mortgage. No default shown, no exhibits were entered into the record; no identification, whatsoever. And then in the Michigan Supreme Court, the decision suddenly it became a judgment. As a finding of default. I don't know how the reportings of the Michigan Supreme Court are affected. I have no idea, whatso ever. But at the same time, there had been the false facts made by Mr. Thorpe in his pleadings, in his brief, all the way down the line, which appeared in the Michigan Supreme Court. And I have alleged that the Court is condoning this fraud.

Could I ask, could the Court ask Mr. Thorpe how that order for (sic, dissolution of) temporary restraining order became a judgment in the Supreme Court decision which makes a big difference, you know, because it wasn't an appealable order. Except to the extent that Mr. Counard who was my second attorney ignored it completely, as well as Mr. Selburn ignored it completely.

Mr. Counard, at one point in the case, and I think he was the attorney on this case for approximately -- well, little less than two years at one point, he motioned the Court to strike Metropolitan's affirmative defenses, appearing in the pretrial statement. And on that motion to strike, Mr. Counard had inferred to me that it removed the adjudication of default.

In her mortgage. And it's the -- at the same time, there, it popped up in the Michigan Supreme Court decision as a judgment. And no attempt was made to even correct that order or remedy the situation. And that's probably why I've never been heard on this case. Never had a day in court. Never been allowed to testify as to anything pertaining to the foreclosure. Never.

Thank you.

And, oh -- I should mention, that I stand on my pleadings. Filed with the Court.

THE COURT: Thank you.

Have we heard the motions of all parties?

MR. THORPE: Yes, Your Honor.

MR. JACOBS: Yes, Your Honor.

MR. WELLER: Yes, Your Honor.

MR. DRAPER: Yes, Your Honor.

MR. SELBURN: Yes, Your Honor.

MR. McFADDEN: Yes, Your Honor.

THE COURT: The Court is ready to rule.

First, on the motion of Defendants William R. McFadden and Abel Selburn for judgment on the pleadings or in the alternative for summary judgment, Defendant Abel Selburn moves this Court for judgment on the pleadings or in the alternative for summary judgment, and Defendant William McFadden moves for judgment on the pleadings alone. Because of the similarity of

the arguments the Court will rule on their motions simultaneously as motions for judgment on pleadings.

It is well settled that Federal District Courts are courts of limited jurisdiction, hence, this Court cannot assert jurisdiction where there is none.

In the instant case, Defendant Selburn and Defendant McFadden allege this Court lacks jurisdiction over the subject matter of the lawsuit, because Plaintiff's complaint, on its face, indicates there is no diversity of citizenship, and there is none.

Mrs. Cramer and both Defendants are citizens and residents of the State of Michigan. Moreover, the Plaintiff's causes of action against the Defendants, reading the pleadings in the light most favorable to her, are for legal malpractice.

Therefore, the Court dismisses that part of the Plaintiff's complaint regarding Defendants Selburn and McFadden, in that the Court lacks jurisdiction over the subject matter, because there is no Federal question and no diversity of citizenship.

Will an order please be submitted within the next ten days to that effect.

The Defendant Federal Home Loan Bank Board's motion to dismiss Post-Removal additional Defendants and complaints and remand the original pleadings, the Defendant Federal Home Loan Bank Board has moved this Court to dismiss this action as to itself and the Michigan -- members of the Michigan Supreme Court. In sum, this Defendant alleges that Plaintiff has unilaterally and improperly added the Federal Home Loan Bank Board and the Michigan Supreme Court as parties to this action on filing her petition

for removal in United States District Court for the Eastern District of Michigan in contravention of State and Federal Rules of Civil Procedure. And where there is no jurisdiction of this Court.

The Court finds that this motion is well founded. Leave has not been applied for; nor granted by this Court to add Post-Removal parties to Plaintiff's lawsuit.

With respect to the Defendant Federal Home Loan Bank Board, the Defendant's motion is hereby granted and an order will be submitted.

The Defendant members of the Michigan Supreme Court have filed a motion on various grounds urging this Court to dismiss.

The Court finds that this Federal District Court lacks appellate jurisdiction over the Michigan Supreme Court and is therefore without jurisdiction to consider the particulars of Mrs. Cramer's allegations.

It is well settled that Federal District Courts are courts of limited jurisdiction. They cannot assert jurisdiction where there is none.

In essence, Mrs. Cramer is seeking to have this Federal District Court reverse, void, or correct the decisions of the Michigan Supreme Court published at 401 Mich 252, on the grounds that the justices are mentally disabled to render decisions.

The appeal for -- from that Court lies with the United States Supreme Court. Mrs. Cramer has sought appellate review of the Michigan Supreme Court's decision at the Supreme Court and that review was denied,

436 US 958; 98 S. Ct 3072, 57 LEd 2d 1123. The final judgment of the Supreme Court is conclusive on this Court.

Moreover, the Court further finds that Mrs. Cramer improperly joined the Post-Removal Defendant members of the Michigan Supreme Court to this action in contravention of both State and Federal Rules of Procedure for removal. The action is dismissed as to those Defendants and an order will be submitted.

Defendant Allen Counard moves this Court to remand this action to the State Court and/or to abstain on various grounds.

In support of this motion, Defendant Counard has indicated that Mrs. Cramer's petition for removal was improperly and untimely filed. 28 USC 1441 and 1446 articulate those actions which can be properly removed and the procedure for removal, pursuant to those provisions of law. This Court finds that this action was improperly removed to the Federal District Court.

First, Mrs. Cramer is the Plaintiff in the action alleging legal malpractice by Mr. Counard, which is pending in the State Court.

Second, a Defendant may remove an action within 30 days after receipt of service. Even if by some stretch of the imagination one could find that Mrs. Cramer were the Defendant in the proceedings against Mr. Counard, the Court must still find that the petition is untimely filed, in that more than 30 days had passed at the time of its filing. Further, there is no allegation of diversity of citizenship and no Federal question presented.

This Court remands the matter as it relates to Mr. Counard. And an order will be presented within 10 days.

As to the remaining Defendants, the motions filed by Metropolitan Savings Association, et al to dismiss the claim, McClintock, Roger Richards, John Denyer, McClintock, donovan, carson, and Roach, Defendants have moved that Mrs. Cramer's complaint be dismissed for lack of jurisdiction over subject matter on the grounds that the subject matter is Res Judicata and/or Collateral Estoppel.

Mrs. Cramer's complaint represents that this Court has jurisdiction under the Civil Rights Act 20 USC 1983. However, it is clear that Mrs. Cramer cannot use that Act to relitigate issues decided in State Court. Coogan v Cincinnati Bar Association, 431 F2d 1209 at 1211, in which the Sixth Circuit Court of Appeals said, "The Civil Rights Act was not designed to be used as a substitute for the right of appeal, or to collaterally attack a final judgment of the highest court of a State and relitigate the issues it decided.

Mrs. Cramer's proper recourse is to appeal to the United States Supreme Court, which she has done, and the United States Supreme Court has ruled upon Mrs. Cramer's petition for Certiorari.

This cause of action, therefore, is dismissed as to those Defendants, and an order will be submitted within 10 days.

Court is in recess.

(Proceedings ended at 10:55 a.m.)

Entered on January 17, 1980 No. 9-72789
U. S. District Court

ORDER OF DISMISSAL IN PART AND
ORDER OF REMAND IN PART

At a session of said Court held in the Federal Building, in Detroit, Michigan, on January 17, 1980.

PRESENT: Honorable Anna Diggs Taylor
U. S. District Court Judge

On the several motions of all the defendants and co-defendants herein, after hearing argument of all parties, and the court having reviewed the files and records in this case, and for the reasons as stated on the record, the Court being fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that as to co-defendant, Allen Counard, this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan, and that as to all remaining defendants and co-defendants herein this action be and hereby is dismissed.

/s/ ANNA DIGGS TAYLOR,
United States District Court
Judge

Dated:
January 17, 1980

Filed February 8, 1980 No. 9-72789
U. S. District Court

NOTICE OF APPEAL

TO: MR. WILLIAM P. THORPE, Esq.
2150 Guardian Building,
Detroit, Michigan 48226

TO: MR. SAMUEL J. BEHRINGER, JR., Esq.
817 Federal Building
Detroit, Michigan 48226

TO: ABEL J. SELBURN, Esq.
Northland Towers West, Suite 407
Southfield, Michigan 48075

TO: MR. GEORGE H. WELLER, Esq.,
7th Floor Law Building
525 W. Ottawa
Lansing, Michigan 48913

TO: WILLIAM R. McFADDEN, Esq.,
1500 N. Woodward Avenue
Suite 111
Birmingham, Michigan 48011

TO: THOMAS M. O'LEARY, Esq., and
JOHN P. JACOBS, Esq.
1000 Guardian Building
Detroit, Michigan 48226

NOTICE IS HEREBY GIVEN that Virginia Cramer, Petitioner-Defendant (in wrongful foreclosure action), Petitioner-Plaintiff above named, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the ORDER OF DISMISSAL IN PART AND ORDER OF REMAND IN PART entered in this action on the 17th day of January, 1980. This appeal is as of right. No bond is required by the court.

/s/ Virginia Cramer,
Dated: In Propria persona
February 8, 1980

Filed March 5, 1980 No. 80-1118
United States Court of Appeals
for the Sixth Circuit

NOTICE OF ELECTION TO DEFER PREPARATION OF APPENDIX

Motion Granted. Entered by the Clerk pursuant to Rule (4F) Sixth Cir. Rules

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Filed March 17, 1980 No. 80-1118
United States Court of Appeals
for the Sixth Circuit

Notice of Hearing, Motion for Stay Pending Review, Affidavit, Proof of Service

PLEASE TAKE N OTICE that upon the pleadings, the affidavits and all papers heretofore filed and upon the proceedings had herein, and upon the annexed affidavit of Virginia Cramer sworn to March 17, 1980, appellant-plaintiff will move this Court on Monday, March 24, 1980, at 9:00 A.M. o'clock in the forenoon of that day or as soon thereafter with the court's schedule at the United States Courthouse and Post Office Building, Cincinnati,Ohio, for a Stay Order Pending Review, suspending and staying litigation in the Wayne County Circuit Court, Third Judicial Circuit, Detroit, Michigan, as contained in the Order remanding to the Wayne County Circuit Court made by the Honorable Anna Diggs Taylor, U.S. District Court Judge, insofar as it prohibits plaintiff-appellant during the pendency of this appeal from properly preparing her brief and appendix on appeal, while the attorneys for co-defendant Allen Counard are attempting to further litigate in the Wayne County Circuit Court, Third Judicial Circuit, in the same case.

The reasons for the relief herein request-

ed are stated in the attached Motion for - Stay Pending Review, and as more particularly shown by the annexed affidavit of Virginia Cramer, Plaintiff-appellant.

/s/ Virginia Cramer -
Petitioner-Plaintiff-Appellant
In Pro Per

Dated:
Mar 17, 1980

MOTION FOR STAY PENDING REVIEW No. 80-1118

Comes now Virginia Cramer, Petitioner-Plaintiff-Appellant, in propria persona, herein, who has concurrently herewith filed with this Honorable Court a Notice of Appeal on February 8, 1980, which was docketed on March 11, 1980 together with the transmitted original record, in the above-captioned case, from the United States District Court, Detroit, Michigan, and on the basis of the facts set forth herein and supported by the attached affidavits, Appellant hereby moves that this Honorable Court grant forthwith a STAY ORDER PENDING REVIEW against the Wayne County Circuit Court, Third Judicial Circuit, Detroit, Michigan, during the pendency of the appeal as effected by the Notice of Appeal filed on February 8, 1980, and which said Order of the United States District Court held:

> "IT IS HEREBY ORDERED AND ADJUDGED that as to co-defendant, Allen Counard, this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan, and that-as to all remaining defendants and co-defendants herein this action be and hereby is dismissed."

An application for relief from that part "remanded to the Wayne County Circuit Court"

was not sought because of such conflict obvious as stated in said Order being appealed from in whole, a copy of which is attached hereto.

The reasons supporting this motion and the facts upon which they are based are shown in the attached affidavit of Appellant, and are summarized here as follows:

1. Since February 1, 1980, and concurrently proceedings were initiated by the attorneys for Co-Defendant Allen Counard (who is also an attorney) and are presently occurring, in the Wayne County Circuit Court.

2. It is impracticable and an excessive burden on your Appellant herein to be unreasonably required to respond in two different jurisdictions at the same time which minimizes Appellant's capabilities as to preparation of her brief on appeal.

/s/ Virginia Cramer
Dated: Petitioner-Appellant
Mar 16, 1980 In Pro Per

STATE OF MICHIGAN)
COUNTY OF WAYNE) SS.

AFFIDAVIT IN SUPPORT OF MOTION FOR STAY ORDER PENDING REVIEW

Virginia Cramer, being duly sworn, deposes and says:

1. That she is the Petitioner-Plaintiff-Appellant and is fully familiar with all of the facts and proceedings in this action; and she submits this affidavit in support of the annexed motion for Stay Order Pending Review, in this action.

2. That on January 17, 1980, Judge Anna Diggs Taylor of the United States District Court, Eastern District of Michigan, Southern Division, Detroit, Michigan, entered an "Order of Dismissal in Part and Order of Remand in Part" from which your Appellant desires greatly to be reviewed in whole on appeal.

3. That commencing on February 1, 1980, the attorneys for co-defendant Allen Counard (who is also an attorney, formerly representing client-Virginia Cramer) filed pleadings in the Wayne County Circuit Court, in this same case, and said attorneys are persisting unreasonably and unjustifiably, and where your Appellant believes that the Wayne County Circuit Court should not have jurisdiction in the matter while pending upon appeal in the United States Court of Appeals.

4. That, in any event, it is more than likely that whatever results by the unreasonable conduct of said attorneys for co-defendant-Allen Counard, in pursuing litigation in the Wayne County Circuit Court, will then be taken on appeal and probably to a third jurisdiction, concurrent with the pending of review in the United States Court of Appeals.

5. That this case already has more defendants and co-defendants, who are attorneys at law, than an octopus has tenacles, and your Appellant feels like she is being strangled under these conditions, because she is not a lawyer.

6. That where your Appellant is diligently and conscientiously in the process of preparation of her brief on appeal, and while being hampered with failing eyesight, it appears absolutely unwarranted and an injustice for her to be unduly imposed upon by unscrupulous opponents in this matter,

and where your Appellant is trying very hard to meet the time schedule as outlined in the United States Court of Appeals letter dated March 11, 1980, copy of which is attached hereto.

7. That it is respectfully submitted that during the pendency of this appeal the provisions of Judge Anna Diggs Taylor's Order pertaining to "this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan' should be stayed, particularly in the light of the many important legal questions and unresolved issues in this matter. In your deponent's opinion, that part of remanding to the Wayne County Circuit Court is in error, and for the reasons that a review court should have the entire matter before them to properly make determinations involved in this appeal.

8. That your Appellant should not be subjected to the drastic effect of having one of the co-defendants separated from the whole of the "case," which would, more than likely, cause much confusion and mistakes along the way in the appeal matters; that your Appellant desires to eliminate confusion and mistakes.

9. In the event that this United States Court of Appeals would not approve a Stay Order Pending Review against the Wayne County Circuit Court, Third Judicial Circuit, Detroit, Michigan, then, in the alternative, A Stay Order Pending Review should be issued against Co-Defendant Allen Counard and his agents, servants, representatives, employees, partners and attorneys.

10. That since 1972, your Appellant has tried diligently to engage the services of an honest and competent attorney, in the prior action and in this action which is really one case, and your Appellant has been unable to find that particular kind of

attorney presumably because of this case being fraught with conflict of interests; that your Appellant has ample funds to pay a good attorney.

11. That in the event that this United States Court of Appeals requires a bond for Stay Order Pending Review, that the amount should be reasonable.

12 No previous application has been made for the relief herein prayed for or for any similar relief except as herein stated.

WHEREFORE, for all of the foregoing reasons your Appellant respectfully prays that this Honorable court forthwith issue its Stay Order Pending Review against the Wayne County Circuit Court, Third Judicial Circuit, State of Michigan, or, in the alternative, issue a Stay Order Pending Review against co-defendant Allen Counard, his agents, servants, representatives, employees, partners and attorneys.

Dated:
Mar 17, 1980 /s/ Virginia Cramer,-
Petitioner-Plaintiff-
Appellant, In Pro Per

(short jurat)

Filed March 27, 1980 No. 80-1118
United States Court of Appeals
for the Sixth Circuit

OBJECTIONS OF DEFENDANT-APPELLEE COUNARD TO PLAINTIFF'S MOTION FOR STAY PENDING REVIEW

Defendant Counard objects to the taking of the within appeal since same is totally improper and furthermore objects to the request for a stay of proceeding since Plaintiff's appeal to the United States District Court for the Eastern District

Michigan is itself improper and therefore no stay of proceedings should issue therefrom.

Specifically, the Order appealed from insofar as it relates to Defendant Counard is Judge Taylor's Order of Dismissal in part and Order of Remand in part. To the extent that the Order of January 17, 1980 affects Defendant Allen Counard, it does so as an Order of Remand. This Court should recall that Plaintiff presently has another previous action pending in State Court and re-commenced this instant action in the United States District Court for the Eastern District of Michigan as a "removal". The Order of January 17, 1980 operates as as remand of the federal action against Allen Counard to be joined with the State action against Allen Counard. 28 USC 1447 (d) state as follows:

> "An order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise, except an order remanding a case to the state court to which it was removed pursuant to sec. 1443 of this title shall be reviewable by appeal or otherwise."

Plaintiff's request for stay of proceedings as to the state action should be denied. Plaintiff already has one existing lawsuit against Defendant Allen Counard pending in State Court in Michigan, and it is entirely onerous, burdensome and vexatious for this federal case to be proceeding on identical grounds in federal court in any event.

Denial of Plaintiff's stay of proceedings is a necessary corollary to 28 USC 1447(d) since this appeal is not proper in the first

place.

PLUNKETT, COONEY, RUTT, WATTERS,
STANCZYK & PEDERSEN
By (unsigned)
Thomas M. O'Leary (P18466)
John P. Jacobs (P 15400)
Attorneys for Co-Defendant-
Appellee Counard

Dated:
Mar 21, 1980

Filed March 27, 1980 No. 80-1118
Un ited States Court of Appeals
for the Sixth Circuit

MOTION TO DISMISS APPEAL

NOW COMES Defendant-Appellee Allen Counard, by and through undersigned counsel, and pursuant to United States Court of Appeals for the Sixth Circuit Rule No. 8, Defendant-Appellee Allen Counard moves to dismiss the within appeal for a lack of jurisdiction for the following reasons:

1. That Plaintiff has pending in State Court, State of Michigan, Circuit Court for the County of Wayne, Virginia Cramer v Allen Counard, Wayne County Docket No. 78-822879CZ, which seeks from Defendant Allen Counard, Plaintiff's former attorney, damages for alleged legal malpractice;

2. That said state action was pending before the instant federal action, Cramer v Counard, United States District Court for the Eastern District of Michigan, Docket No. 9 72789, which seems identical or virtually identical claims against Defendant Counard and which purports to exist in Federal Court because of Plaintiff's attempt to remove said action;

3. That the Order appealed from in the instant action is the Order of Judge Anna Diggs Taylor dated January 17, 1980 which Order dismisses certain Defendants and, as to Defendant Allen Counard, remands the federal action to State Court for joinder with the state action previously pending;

4. That insofar as the Order appealed from of Judge Anna Diggs Taylor dated January 17, 1980 is an Order of Remand as to Defendant Counard requiring the federal action to be remanded to State Court to be joined with the Wayne Circuit action, Docket No. 78-822879 CZ, such Order of Remand is specifically not appealable pursuant to 28 USCA 1447(d), and the within appeal should be dismissed for a complete lack of jurisdiction in this Court to review same.

5. That pursuant to 28 USC 1447(d), Plaintiff's instant action is not appealable as to Defendant Allen Counard and same should be dismissed pursuant to said statute.

WHEREFORE, Defendant-Appellee Counard prays that the appeal filed by the Notice of filing Appeal of Plaintiff dated February 8, 1980 should be dismissed by this Court forthwith pursuant to 28 USC 1447(d) insofar as the Order appealed from dated January 17, 1980 seeks to remand a portion of Plaintiff's federal action as to Defendant Allen Counard to State Court to be joined with the state action previously filed by Plaintiff against Defendant Counard which is still pending in said State Court.

Dated:
Mar 25, 1980

PLUNKETT, COONER, RUTT, WATTERS, STANCZYK & PEDERSEN
by (unsigned)
Thomas M. O'Leary (P18466)
John P. Jacobs (P 15400)
Attorneys for Co-Defendant-Appellee Counard

Affidavit of John P. Jacobs, unsigned.

Filed April 7, 1980 No. 80-1118
United States Court of Appeals
Sixth Circuit

OBJECTIONS TO MOTION TO DISMISS APPEAL

COMES NOW Plaintiff-Appellant Virginia Cramer, in propria persona, and objects to Defendant-Appellee Allen Counard's motion to dismiss appeal, and the said motion should be denied, for the following reasons:

1. Answering to paragraph 1, Plaintiff-appellant denies the same and affirmatively states that said matter of Civil Action No. 78-822-879 CZ, and by motions being deferred is pending in the Michigan Supreme Court, Docket No. 62249 (not in the Wayne County Circuit Court) and for the reasons that an "Order Setting Aside Default of Co-Defendant-Allen Counard" was entered in abuse of the court's discretion, and where Co-Defendant-Allen Counard failed to plead and defend and subsequently by a so-called 'answer' to complaint is till a failure to plead or defend. Further, the attorneys for Co-Defendant-Attorney-Allen Counard claimed that by Plaintiff-Cramer's acceptance of $50.00 costs awarded by the said Wayne County Circuit Court judge in setting aside default of said Co-Defendant-Allen Counard, that Plaintiff-Cramer 'waived' her appeal rights. Plaintiff-Cramer sought appellate review of same in the State appellate divisions, and for the reason that it appears that the $50.00 costs may be deemed to be some kind of a bribe so that the Order entered in abuse of the court's discretion may not be appealed from. The said $50.00 costs is filed as evidence of said bribe, in the Michigan Supreme Court, and the matter is pending in the Michigan Supreme Court (together with appeal from Summary

judgment entered in favor of Defendants-Metropolitan, et al.).

2. Answering to paragraph 2, Plaintiff-Appellant denies the same and affirmatively avers that she filed a non-identical complaint in the Federal district court, Docket No. 79-72789, where the pertinent parties herein are aligned as: Virginia Cramer, Petitioner-Plaintiff vs Allen Counard, attorney at law, Co-Defendant; that further, Co-Defendant-attorney-Allen Counard failed to answer to said Complaint in the Federal district court, Docket No. 79-72789, and therefore, failed to plead and defend as to allegations and charges of conspiracy and obstructing justice, as well as failed to plead and defend to allegations and charges of legal malpractice. That further, Defendants and Co-Defendants Metropolitan Savings and Loan and their attorneys' motion to remand (as to removal of State court case) was denied by the United States District Court in this matter.

3. Answering to paragraph 3, Plaintiff-Appellant denies the same and affirmatively avers that there is no authority which permits a remand of the federal action for joinder with the state action in the State court. The said order entered on January 17, 1980, in the United States District Court reads as follows:

> "On the several motions of all the defendants and co-defendants herein, after hearing argument of all parties, and the Court having reviewed the files and records in this case, and for the reasons as stated on the record, the Court being fully advised in the premises,

"IT IS HEREBY ORDERED AND ADJUDGED that as to co-defendant, Allen Counard, this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan, and that as to all remaining defendants and co-defendants herein this action be and hereby is dismissed."

and Plaintiff-Appellant is appealing the said "Order" in whole, and is in the process of preparation of her brief on appeal for filing in the United States Court of Appeals, Sixth Circuit.

4. Answering to paragraph 4, Plaintiff-Appellant denies the same and affirmatively avers that, again, there is no authority which would require a federal action to be remanded to a State court to be joined with a lower court (Wayne County Circuit Court) case when said matter was pending in the Michigan Supreme Court of the State of Michigan. Further, Plaintiff-Appellant denies that the said Order of Remand In Part is not appealable and denies that the United States Court of Appeals lacks jurisdiction to review same pursuant to 28 USCA 1447(d); further, Plaintiff-Appellant specifically and affirmatively avers that 28 USCA 1447(d) allows for appeal, to wit:

"an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise." (emphasis added)

NOTE: This Honorable court should take notice that the attorneys for Co-Defendant-Attorney-Allen Counard have misrepresented to the court and mis-quoted the provisions of 28 USCA 1447 (d) as shown on page 2 of their "Objections to Plaintiff's

motion for stay pending review."

5. Answering paragraph 5, Plaintiff-Appellant denies the same and she affirmatively states that the provisions of 28 USC 1447 Id) mandate review by appeal or otherwise, pertaining to an order remanding a case to the State court which was removed pursuant to section 1443 of Title 28; that, therefore, the motion to dismiss appeal should be denied.

WHEREFORE Plaintiff-appellant in pro per prays that the motion to dismiss appeal be denied, for the reasons above-stated and plaintiff-appellant incorporates herein her brief in support of her Objections to motion to dismiss appeal attached hereto, and for the reasons that there is no authority which permits a federal action to be joined with the State action in the State court.

Respectfully submitted,
/s/ Virginia Cramer,
Plaintiff-appellant
In Pro Per

Dated:
Apr 2, 1980

BRIEF IN SUPPORT OF OBJECTIONS TO MOTION TO DISMISS APPEAL

RELEVANT BACKGROUND OF FACTS as to Co-Defendant-attorney-Allen Counard:

In a prior action, Wayne Circuit Court No. 115-792, ultimately reported at 401 Mich 252 (Michigan Supreme Court No. 57215) dated October 6, 1977, mortgagor-Virginia Cramer hired two (2) different attorneys, at different times, the first of whom was Co-Defendant Abel J. Selburn, and the second of whom was Co-Defendant-Allen Counard.

In the second action commenced in the Wayne County Circuit Court by mortgagor-Virginia Cramer (in wrongful foreclosure action) against Defendants Metropolitan - Federal Savings and Loan and their attorneys Co-Defendants herein, Petitioner-Virginia Cramer also named her second former attorney, Allen Counard, as a Co-Defendant, in Civil Action No. 78-822-879 CZ.

This instant motion to dismiss appeal is initiated by the attorneys who represent said Co-Defendant-Attorney-Allen Counard only.

The allegations in said Civil action No. 78-822-879 CZ consist of legal malpractice, fraud, concealment and/or deception, and further alleges that fraud was perpetrated upon the Michigan State courts in said prior action No. 115-792, ultimately reported at 401 Mich 252.

(The instant action, as filed in the United States District Court further named the Michigan Supreme Court members, jointly, severally and individually, as Co-Defendants, and alleges that said members have condoned fraud, among other things.)

In said second action commenced in the Wayne County Circuit Court, No. 78-822-879 CZ, Co-Defendant-Allen Counard failed to plead and defend and a Default and Affidavit in Support of Default was filed against said Co-Defendant-Allen Counard (an attorney at law). By his attorneys, a motion to set aside default was filed, and where Plaintiff-Virginia Cramer filed objections and specifically averred that setting aside default, without a showing of good cause, would be abuse of discretion by the court. The court granted Co-Defendant-Allen Counard's motion and entered an order

setting aside default. Whereupon, a so-called 'answer' was filed on behalf of Co-Defendant-Allen Counard which is still a failure to plead or defend and claiming as his only affirmative defense the two-year statute of limitations as to 'malpractice'. No meritorious defenses were offered.

(In the interim, Defendants and Co-Defendants Metropolitan Federal Savings and Loan and their attorneys, obtained an Order granting Accelerated and/or Summary Judgment dismissing as to all other Defendants and Co-Defendants as to the Complaint filed alleging legal, malpractice, fraud, concealment and deception and that fraud had been perpetrated upon the court. No answer to said complaint was filed by said multiple defendants and their attorneys as Co-Defendants.)

Petitioner-Cramer sought to appeal and where the Michigan Court of Appeals dismissed said appeal, on the basis of the "Order Setting Aside Default of Co-Defendant Allen Counard" was not a final appealable order. However, it is Plaintiff-Cramer's contention that it is a final order where the pleadings of Co-Defendant Allen Counard's attorneys claimed that by Plaintiff-Cramer accepting $50.00 costs for the trouble she was cause in filing said "Default" which the Wayne County Circuit Court set aside in the absence of good cause, that she had waived her appeal rights by said acceptance of $50.00 costs. Plaintiff-Cramer further sought to appeal in the Michigan Supreme Court as to the two (2) separate orders entered in the Wayne County Circuit Court, together with numerous motions filed in the Michigan Supreme Court, involving the defective decision reported at 401 Mich 252.

Further, in the interim, the attorneys for Co-Defendant Allen Counard filed in the Wayne County Circuit Court (while said matters were pending in the appellate divisions of the Michigan State courts) motions for accelerated and/or summary judgment based solely on the affirmative defense of the two-year statute of limitations period as to "malpractice", and in the absence of any meritorious defenses and where the so-called 'answer' filed on behalf of Co-Defendant-attorney-Allen Counard, is absent of any specific averments and is still a failure to plead or defend.

Subsequently, the attorneys for Co-Defendant-attorney-Allen Counard, have repeatedly filed in the Wayne County Circuit Court motions for accelerated and/or summary judgment, based on the one premise of barring Plaintiff-Cramer by invoking the two-year Statute of Limitations, which is not applicable. The asserted malpractice charges are prima facie evidence in the Wayne County Circuit Court records.

However, Plaintiff-Cramer charges more than malpractice, under 42 USC 1985 and that lawyers as a class-based group engage in a motivated conspiracy (or cover-up) invidiously discriminatory against their own client and/or clients (and mortgagors) and where said client is denied a day in court, denied due process of law and denied the equal protection of the laws by the very simple effect of hiring a lawyer. Such is the instant case, where Petitioner-Cramer has never had a day in court as to the foreclosure proceedings taken by mortgagee-Metropolitan Federal Savings and Loan, and where no default in the mortgage was ever shown, and where said mortgagee accelerated the principal debt by foreclosure

on mortgagor's own moneys as "escrow" funds, in an excessive amount, for the future liabilities of taxes and insurance which were not yet assessed, not billed, not due. Nothing was due and nothing was unpaid;- there was a credit balance in mortgagor-Cramer's "escrow" account, at the time of the foreclosure initiated by the mortgagee-Metropolitan, and which said credit balance was applied as a reduction of the principal balance in the Sheriff's Bidding Statement (prepared by mortgagee-Metropolitan) on the sale of said real property. No taxes or insurance payments were due; none were unpaid. However, the foreclosure was initiated by the mortgagee because mortgagor complained that her "escrow" moneys were being mishandled where the mortgagee failed and neglected to pay taxes and insurance when due, although funds were available, alowing said taxes and insurance to become seriously delinquent, repeatedly. Further, the courts forced Cramer to hire lawyers and where upon engaging the services of said lawyers Cramer has never had a day in court to prove that there was no basis for the foreclosure and that Cramer was never in default of said mortgage covenant and agreement, and Cramer was never in default of the mortgage note. In fact, as said by the Michigan Supreme Court, in 401 Mich 252, she was "well ahead in her repayment schedule." Contrary to the decison of the Michigan Supreme Court (among many other false facts in said decision) Cramer paid "escrow" moneys each and every month without fail. After the foreclosure by advertisement was first published, Cramer refused to pay "escrow", not before the foreclosure publication. The foreclosure occurred first. Subsequently, mortgagor-Cramer refused to pay "escrow." The difference in these elements are of great and significant importance, and the Michigan Supreme Court disregarded the specific dates of occur-

rances of facts; totally unfair to mortgagor-Cramer.

See, A Sick Profession -- Judge Warren E. Burger, 5 Tulsa L J 1 (January 1968)

"My final proposition can be roughly stated as follows:

(1) the legal profession as a whole has very poor standing;

(2) there are many causes for this; some of them are the incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and

(3) there is something we can and ought to do about this as the English bar and bench did a century ago.

" * * * There is no single cause for what * * * would be called the "bad image" of the legal profession. The total image is a stream into which many things are poured. The deportment and misconduct of some members of the bar pollute this stream and their bad manners contribute to the bad performance. * * * The title lawyers and real estate lawyers who engage in miscellaneous chicaneries to bilk home-owners are, of course, a large factor; and, with the enormous expansion in the building, buying and selling of homes, thousands of Americans have been mistreated by this group and are properly resentful. * * * There are others. * * * "

CURRENT FACTS: (pertinent to Co-Defendant Allen Counard only)

While this entire case (which is really one case) has snow-balled in the filing of the Federal court action and where other parties are named as Co-Defendants, your

plaintiff-appellant will attempt to confine these current facts solely to Co-Defendant-Attorney-Allen Counard, by his attorneys - motion to dismiss appeal. (This is emphasized for the reason that, where the court will review the pleadings filed by Defendants and Co-Defendants, it is deliberately confusing, and which the court should not tolerate, where it erroneously appears (like mob-violence) that the attorney for the Federal Home Loan Bank Board may be representing the Michigan Supreme Court, which is not authorized; the attorneys for - Co-Defendant-Allen Counard may be representing the mortgagee-Metropolitan Federal Savings and Loan and their attorneys, etceterra, etceterra, etceterra !!! and which such rrpresentation is unauthorized.)

The State case for which mortgagor-Cramer sought "removal" of to the Federal District Court, is styled as:

Virginia Cramer, Petitioner-Defendant (in wrongful foreclosure action) Petitioner-Plaintiff VS METROPOLITAN SAVINGS ASSOC., a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOC., JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, jointly, severally and individually, Plaintiffs in wrongful foreclosure action, Defendants and McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, attorneys at law, jointly, severally & individually, Co-Defendants and ALLEN COUNARD, Co-Defdnt.	Mich S Ct No 62249 (filed 11-6-78) Mich Ct of Appeals No 78-3794- filed 9-21-78 Wayne Cir. Ct. No. 78-822-879 CZ (commenced 7-14-78) Prior (Wayne) No. 115-792 (Commenced 8-12-68) Mich S Ct. No. 57215 reported at: 401 Mich 252

The instant action, as filed in the Federal District Court on July 17, 1979, is styled as shown in these pleadings herein as filed in the United States Court of Appeals, Sixth Circuit, and where Petitioner-Plaintiff named additional Co-Defendants, as follows:

Abel Selburn (mortgagor-Cramer's first attorney)
William R. McFadden (mortgagor-Cramer's third attorney)
Federal Home Loan Bank Board, Director,
Michigan Supreme Court members

The Complaint for Declaratory Judgment, Preamble, Reversal of Michigan Supreme Court Decision, Injunctive Relief, and Money Damages for Injuries to Person and Property, as filed in the Federal District Court, together with Petition for Removal, on July 17, 1979, together with Motion for Preliminary, Permanent and Eternal Injunctive Relief and Notice of Hearing, in all, were served by the U. S. Marshal's office upon all the main multiple defendants and co-defendants, including said personal service of process on Co-Defendant Allen Counard, with Summons.

Co-Defendant Allen Counard never answered to said Complaint, which is non-identical and with separable controversies and causes, included as follows:

Preamble, pages 1 through 19
1. Jurisdiction and Venue, paragraphs 1.1 through 1.10
2. Cause of Action and Federal Intervention, paragraphs 2.1 through 2.7
3. Wrongful Foreclosure, Slander of Title, paragraphs 3.1 through 3.11
4. Actual Controversy - State Action Involved, paragraphs 4.1 through 4.8

5. Willful and Malicious Tort, paragraphs 5.1 through 5.4
6. Fraud, Concealment and Deception - Attorney Malpractice, (Selburn and Counard) paragraphs 6.1 through 6.28
7. Fraud, Concealment or Deception - Attorney Malpractice, McClintock Donovan Carson & Roach, Michael Doelle and William P. Thorpe, paragraphs 7.1 through 7.36
8. Conspirators - Obstructionists of Justice (Selburn, Counard and McFadden) paragraphs 8.1 through 8.15
9. Actual Controversy - Federal Action Involved - Federal Home Loan Bank Board, paragraphs 9.1 through 9.25
10. Injunctive Relief Against Michigan Supreme Court Justices, paragraphs 10.1 through 10.23
11. Measure of Damages, paragraphs 11.1 through 11.2
12. Prayer for Relief and Demand for Trial by Jury, paragraphs 12.1 through 12.7

On January 17, 1980, the Federal District Court-Detroit, Michigan, entered an "Order of Dismissal In Part and Order of Remand in Part." The 'remand' pertains to only Co-Defendant-attorney-Allen Counard. Petitioner-Cramer (Plaintiff-appellant herein) filed her Notice of Appeal on February 8, 1980. In the interim, Co-Defendant-attorney-Allen Counard, by his attorneys, have again resorted to their harassment tactics and have repeatedly filed in the Wayne County Circuit Court motions for accelerated and/or summary judgment and solely based upon the two-year statute of limitations as to 'malpractice'. Plaintiff-Appellant-Cramer contends that the said two-year statute of limitations is not applicable, and as more fully shown in her Law and Argument portion of this brief, below.

More specifically, "Cramer" contends that the Wayne County Circuit Court, by Michigan Court of Appeals decisions, is not authorized to enter such an order of dismissal as to Co-Defendant-attorney-Allen Counard, and which would require taking on appeal if granted by the Wayne County Circuit Court.

In the United States District Court, all of the main multiple Defendants and Co-Defendants were served personally by the U.S. Marshal's service of process, with the non-identical Complaint and Summons issued. However, only Co-defendants Selburn and McFadden filed 'answers' to said Complaint.

Prior to the entry of the "Order by the United States District Court, the only pleadings filed on behalf of Co-Defendant-attorney-Allen Counard, by his attorneys, are:

Motion for Remand of Above-Captioned Action

Motion to Exercise Discretion in Favor of Abstention and Dismissal of Declaratory Complaint

Furthermore, from six (6) pages of docket entries in said Federal District court, Docket No. 79-72789, it shows, in part, as follows:

* * *

1979	Sept 18	33.	Letter from Corbin Davis (Supreme Court) re: motions pending in Supreme Court are to be deferred until U.S. District Court makes ruling. DD 9-19-79

* * *

1980	Jan 17	---	Deft's McFadden's motion for judgment on the pleadings heard and granted; Defts' Selburn's Motion for judgment on the pleadings heard and

granted; Deft's Federal Home
Loan motion to dismiss granted;
Deft Allen Counard's Motion
to remand cause to Circuit
Court, granted.
Deft Metro Savings Assoc's
Motion to Dismiss granted.
Motion to remand denied;
Deft's (Members of Supreme
Court Motion to dismiss granted.
Taylor, J DD 1-18-80

* * *

Moreover, the "Order of Dismissal In Part and Order of Remand in Part" entered on January 17, 1980, by the Honorable Anna Diggs Taylor, U. S. District Court Judge, CA No. 9 72789, reads as follows:

> "On the several motions of all the defendants and co-defendants herein, after hearing argument of all parties, and the Court having reviewed the files and records in this case, and for the reasons as stated on the record, the Court being fully advised in the premises,
>
> "IT IS HEREBY ORDERED AND ADJUDGED that as to co-defendant, Allen Counard, this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan, and that as to all remaining defendants and co-defendants herein this action be and hereby is dismissed."

No answer to the Complaint in the United States District Court was filed by said co-defendant-attorney-Allen Counard and his attorneys. In fact, no other pleadings were filed by said co-defendant Allen Counard. It is obvious that counsel for co-defendant Counard did not know to which State jurisdiction he was asking for remand to.

LAW AND ARGUMENT

None of co-defendant Counard's pleadings offer any kind of meritorious defense; not in the State court action—and not in the Federal court action. Co-Defendant Counard, by his attorneys, rely only on the two-year period of limitations, found in MCLA 600.5805 (3); MSA 27A.5805 "The period of limitations is 2 years for actions charging malpractice."

However, in MCLA 600.5807 (8); MSA 27A. 5807 "The period of limitations is 6 years for all other actions to recover damages or sums due for breach of contract."

"Cramer's" contention is that, in view of all of the case law available to support that attorneys are generally engaged on a contractual basis, that the 6-year period in MCLA 600.5807 (8); MSA 27A.5807, is more applicable as to alleged "legal malpractice" as distinguished from perhaps medical malpractice. (This is not in issue before this court; Plaintiff-appellant herein simply wants to point out that there is no intention on her part to avoid the Statute of Limitations issue in the Wayne County Circuit Court.)

However, more significantly, and furthermore, MCLA 600.5855; MSA 27A 5855 "Fraudulent concealment of claim or identity of person liable, discovery" provides as follows:

> Sec. 5855. If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be

commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations."

Thus, where the second action was commenced in the Wayne Circuit Court, CA 78-822-879 CZ, on July 14, 1978, following the decision of the Michigan Supreme Court dated October 6, 1977, the instant cause against co-defendant Allen Counard (together with other multiple defendants and co-defendants) therefore, is not barred by the Statute of Limitations, where the time element must be computed from the date of October 6, 1977, reported as 401 Mich 252.

Moreover, in Corley v Logan (1971) 192 NW 2d 319, 35 Mich App 199, where the attorney's conduct by filing an improper ready for pretrial certificate and whether it fraudulently concealed his potential liability to his client was deemed by the Michigan Court of Appeals to be a fact question precluding summary judgment in favor of either party in a legal malpractice action.

(It should be noted that in all probability there are other matters of legal malpractice where fraud, concealment and deceit may be shown and not yet discovered (as to the prior action), and the statute of limitations has not yet begun to run. In the State court action No. 78-822-879 CZ, as relevant to the prior State court action No. 115-792, where attorney Allen Counard was supposed to have managed the case (involving wrongful foreclosure) for a period of approximately 2 years.

The parties, Petitioner-Plaintiff Virginia Cramer vs Co-Defendant Allen Counard are

aligned the same in the State court action 78-822-879 CZ, as in the United States District Court Action No. 79-72789, and where said co-defendant Allen Counard, by his attorneys,—lacked standing to invoke the "absention-doctrine" in said Federal court (as to the anti-injunction statute, — and pertaining to the members of the Michigan Supreme Court).

That further, Petitioner-Virginia Cramer (who claims to be a "defendant in part, as to the wrongful foreclosure, and plaintiff in part as to Co-Defendant Allen Counard) in the said Federal court action, involving civil rights and constitutional issues and federal questions (among other matters) and including conspiratorial issues as to that class-based, invidiously discriminatory motice of "cover-up" between and among attorneys, as against their client or clients, and which may also include unnamed co-conspirators who go in the guise of judges or justices, as members of the judiciary, it is appropriate for Petitioner-Cramer to invoke 42 USC 1983, 1985; 28 USC 1343, 1443; 12 USC 1461, et seq., and 28 USC 1337, involving violations of 15 USC 1 and 2, et seq., together with deprivations of civil rights, deprivations of due process of law, deprivations of equal protection of the law, among many other areas of jurisdiction in the federal courts.

(Where this action originates between a mortgagor and mortgagee as to "escrow" funds, which is the mortgagor's own money, at the beginning all the mortgagor-Virginia Cramer wanted was to have her taxes and insurance paid when due, and where the mortgagee failed and neglected, repeatedly, to utilize mortgagor's "escrow" funds properly and at the same time requiring "excessive" amounts (called cushioning in the industry) "Cramer"

sought a release from the covenant and agreement to enable her to pay her own liabilities and obligations, and the mortgagee-Metropolitan refused and maliciously foreclosed by advertisement on "escrow" funds and accelerated the principal debt. Following that, the mortgagee-Metropolitan then refused to accept any moneys from "Cramer" "on account of the foreclosure".) Since then, the attorneys, the State court judges, the justices of the Michigan Supreme Court, and others, have mixed "apples" and "oranges" and gone "bananas" which at the beginning amounted to only "peanuts", except for a "Sick Profession" and what this case has evolved into. The mortgagee-Metropolitan was ready, and with the aid of the courts, to hand this mortgagor from a meat-hook, upside down, loan-shark style, to extort "excessive escrow" funds for their mishandling, and to confiscate her property, when nothing was due and nothing was unpaid.

See, Mitchum v Foster, 407 US 225, at 238-239;

> "Section 1983 was originally Section 1 of the Civil Rights Act of 1871. 17 Stat. 13. It was "modeled" on section 2 of the Civil Rights Act of 1866, 14 Stat. 27, and was enacted for the express purpose of "enforcing the Provisions of the Fourteenth Amendment." 17 Stat. 13. The predecessor of 1983 was thus an important part of the basic alteration in our federal system wrought in the Reconstruction era through federal legislation and constitutional amendment. As a result of the new structure of law that emerged in the post-Civil War era-- and especially of the Fourteenth Amendment, which was its centerpiece--the role of the Federal Government as a guarantor of basic federal rights against state power was clearly established. Monroe v Pape, 365 US 167;

McNeese v Board of Education, 373 US 668; Shelley v Kraemer, 334 US 1, Swickler v Koota, 389 US 241, 245-249 (Etceterra).

"Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law unpon rights secured by the Constitution and laws of the Nation.

"It is clear from the legislative debates surrounding passage of 1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment "against State action . . . whether that action be executive, legislative, or judicial." Ex parte Virginia, 100 US 339, 346 (emphasis supplied). Proponents of the legislation noted that state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights.

" * * * Hence this bill throws open the doors of the United States courts to those whose rights under the Constitution are denied or impaired." Cong. Globe, 42d Cong., 1st Sess., 374-376 (1871).

This view was echoed by Senator Osborn: "If the State courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate.. . . We are driven by existing facts to provide for the several states * * * what they have been unable to fully provide for themselves; i.e., the full and complete administration of justice in the court. * * * "

"Section 1983 was thus a product of a

vast transformation from the concepts of federalism that had prevailed in the late 18th century * * * . The very purpose of 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights -- to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative or judicial." Ex parte Virginia, 100 US, at 346.

In Huffman et al v Pursue, Ltd., 420 US 592, the high court said,

> " * * * assuming, arguendo, that litigants are entitled to a federal forum for resolution of all federal issues, that entitlement is most appropriately asserted by a state litigant when he seeks to relitigate a federal issue adversely determined in completed state court proceedings."
> Pp 605-607.

Where the State action was pending in the Michigan Supreme Court, it was error for the United States District Court to remand to the Wayne County Circuit Court. 28 USC 1447 (c) states as follows:

> "If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, * * * . A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. * * * "

The instant Order entered on January 17, 1980, as a final judgment, includes an erroneous remand (as to Co-Defendant Allen Counard only) to the Wayne County Circuit Court. The matter was pending in

the Michigan Supreme Court. Prior law on removal of suits from State courts initiates from the Judicial Code of 1911, c. 231, 36 Stat. 1087, entitled "Act to codify, revise and amend the laws relating to the judiciary" provided in section 28, as amended, as follows:

> " * * * Whenever any cause shall be removed from any State court into any district court of the United States, and the district court shall decide that the cause was improperly removed, and order the same to be remanded to the State court from whence it came, * * * ." (emphasis added)

Removal was sought from the Michigan Supreme Court, not from the Wayne County Circuit Court, and therefore, the remand to the Wayne County Circuit Court included in the final judgment entered on January 17, 1980, is appealable as an erroneous remand, and which, further is provided for in 28 USC 1447 (d) which states as follows:

> "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to to the State court from which it was rem oved pursuant to section 1443 of this title shall be reviewable by appeal or otherwise." (emphasis added)

"From which it was removed" is synonymous to "from whence it came". Remand of the cause to the Wayne County Circuit Court was error for the reasons that the cause was pending in the Michigan Supreme Court, and when "removal" was sought.

The Michigan Supreme Court was never furnished with a certified copy of the Order as entered in the United States District Court on January 17, 1980. There is no inference or intent for the United States District Court cause to be joined with the State action aginst Co-Defendant Allen Counard. There is no authority to do so; it would be highly improper. The Wayne - County Circuit Court would have no jurisdiction to review the matter, which involved a decision rendered by the Michigan Supreme Court reported at 401 Mich 252, and where the Michigan Supreme Court members are named as Co-Defendants.

28 USC 1443, provides as follows:

"Any of the following civil actions * * * commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act - on the ground that it would be inconsistent with such law."

Mortgagor-Cramer, is actually a defendant - in the foreclosure by advertisement proceedings initiated by the Mortgagee-Metropolitan, and she has never had a day in court as to said foreclosure. Hopefully, it may not be

necessary for "Cramer" to take an ax to Washington, D.C. and literally chop down the doors to the United States Supreme Court to gain access to the court. Boddie vs. Connecticut, 401 US 371, 91 S Ct 780; 28 L Ed 2d 113 (1971). "Among the most dangerous things an injured party can do is to appeal to justice." Mitchum v Foster, 407 US 225-244, Id. 241.

Further, mortgagor-Cramer claims state action is involved by having been forced to hire lawyers, the first of whom abandoned the case in fraud of his client-Cramer, the second of whom, Allen Counard, misrepresented and mismanaged the case so as to assure the denial of equal protection of the laws and the denial of due process in ruthless violation of the Fifth and Fourteenth Amendments to the United States Constitution (among other violations) because of conflict of interest, among other things. Under the provisions of 42 USC 1983, the courts have required a showing of state action. Morgan v Odem, C.A. La 1977, 552 F 2d 147.

> "Test of whether joint participation or conspiracy exists, for purposes of state action requirement of this section (1983), is whether facts alleged demonstrate that private individual and public official acted with common understanding or "meeting of the minds" to deprive plaintiff of his constitutionally protected rights." (emphasis added) Baer v Baer, D.C. Cal. 1978, 450 F Supp 481.

In a case, where a Plaintiff motioned to remand, Sweeney vs Morgan Drive Away, Inc., 394 F Supp 1216 (1975) the United States District Court denied Plaintiff's motion to remand, ruling that "A plaintiff may not defeat federal jurisdiction by omitting or

neglecting to include reference to federal statutes which are an essential part of the lawsuit; and that on motion to remand case to state court, defendant carries the furden of demonstrating that plaintiff's complaint arises under federal law."

Where the instant parties are now before the court, the defendant Allen Counard has made no showing that Plaintiff's complaint arises under federal law; thus, defendant-Allen Counard was not entitled to "remand."

In Bridgeport Ed. Ass'n v Zinner, 415 F Supp 715 (1976) the court said " * * * good case could be made for removal even without such unanimity since statutory language specifies that case may be removed by "the defendant" and since such civil rights removal represents longstanding judgment by Congress that defendants in certain types of civil rights cases should be able to remove cases to federal courts" and where not all defendants joined in petition for removal. "Cramer" herein does not mean to infer any racial discrimination of "any act" as used in the statute permitting removal of case where state law by its terms requires the denial of equal rights when forced to hire an attorney; that such denial of equal rights is implemented purposefully by that class-based, invidiously discriminatory group called "attorneys". It is interesting to note that the United States District Court denied the motion to remand on behalf of the mortgagee-Metropolitan and their attorneys, which is not appealable.

"Cramer" herein urges that the said Co-defendant Allen Counard not be separated from the whole of the case, so as to enable the minimization and/or elimination of the drastic effect of confusion in this case.

WHEREFORE Plaintiff-appellant Virginia Cramer, in pro per, prays that this Honorable court will deny the motion to dismiss appeal, and for the reasons as above shown that this court does not lack jurisdiction.

Respectfully submitted,
/s/ Virginia Cramer,
Plaintiff-appellant
Defendant in wrongful foreclosure, In Pro Per

Dated:
April 2, 1980

Filed April 7, 1980 No. 80-1118
United States Court of Appeals
for the Sixth Circuit

PLAINTIFF'S REPLY IN OPPOSITION TO OBJECTIONS OF DEFENDANT-APPELLEE COUNARD TO PLAINTIFF'S MOTION FOR STAY PENDING REVIEW

Comes now Plaintiff-Appellant Virginia Cramer, in pro per, and in reply in opposition to Defendant-Counard's objections to Plaintiff's motion for Stay Pending Review, Plaintiff-appellant says as follows:

First, the attorneys for Defendant-Counard (who is also an attorney, formerly representing client-Virginia Cramer in the prior action No. 115-792 Wayne County Circuit Court, and ultimately reported at 401 Mich 252) have misrepresented and misquoted 28 USC 1447 (d) which is correctly states as follows:

> "An order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise, except an order remanding a case to the state court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise." (emphasis added)

The above said provision does not state "to the state cour to which it was removed" and the court herein should not tolerate said misrepresentation and deliberate misquote by said attorneys.

FACTS:

Petitioner-Cramer sought "removal" of the State case to the United States District Court while the said case was pending in the Michigan Supreme Court. Petitioner-Cramer further filed a non-identical Complaint for Declaratory Judgment (among other pleadings) together with the Petition for Removal. Defendant-Counard was personally served with process with Complaint and Summons as filed and issued in the United States District Court, by the United States Marshal.

Defendant Counard never answered to the said Complaint. Instead Defendant Counard, by his attorneys, filed:

Motion for Remand of Above-Captioned Action
Motion to Exercise Discretion in Favor of Abstention and Dismissal of Declaratory Complaint

The "Order of Dismissal In Part and Order of Remand In Part" entered in the United States District Court on January 17, 1980, in no way infers that the federal action against Defendant Allen Counard be joined with the State action, in the State court.

From six (6) pages of docket entries in said Federal district court, Docket No. 79-72789, it shows, in part, as follows:

* * *

1979	Sept 18	33.	Letter from Corbin Davis (Supreme Court) re: motions pending in Supreme Court are to be deferred until U.S. District Court makes ruling. DD 9-19-79

* * *

1980 Jan 17 --- Deft's McFadden's motion for judgment on the pleadings heard and granted; Defts Selburns' Motion for judgment on the pleadings heard and granted; Deft's Federal Home Loan motion to dismiss granted; Deft Allen Counard's Motion to remand cause to Circuit Court, g granted. Deft Metro Savings Assoc's Motion to Dismiss, granted, Motion to remand denied; Deft's (Members of Supreme Court) Motion to dismiss granted.
DD 1-18-80 Taylor, J

* * *

ARGUMENT AND LAW:

The provisions in 28 USC 1447 (d) do not state "to the state court to which it was removed" and the court herein should not tolerate said misrepresentation and deliberate misquote by said attorneys. See, 7 Am Jur 2d, at 15. Discipline as a judicial function.

> "Independently of statute, and by reason of a necessary and inherent power to control the conduct of its own affairs and to maintain its own dignity, a court has summary jurisdiction to deal with the alleged misconduct of an attorney by suspending or disbarring him or by imposing other disciplinary measures on him."

See, 7 Am Jur 2d, at 4, Duties of office.

> "Above all, an attorney must exhibit good faith and honorable dealing with the court."

See, 7 Am Jur 2d, at 26, In relation to Court or Judge.

"Generally. The Court has inherent power to suspend or remove an attorney whose conduct tends to impede, obstruct, or prevent the administration of the law, or to destroy public confidence in such administration."

See, 7 Am Jur 2d, at 27, "* * * fabrication * * *. (A)n attorney may be suspended or disbarred for causing * * * to verify documents that the attorney * * * uses in a manner designed to deceive or mislead the court."

There is no inference in the "Order of Dismissal In Part and Order of Remand In Part" that the federal action against Defendant Allen Counard be joined with the State action in a State court. There is no authority which permits a federal action to be joined in a State court proceeding.

Furthermore, where a State case is remanded from a Federal court, it can be remanded only to the State jurisdiction from whence it came. There is no authority which permits a Federal court to remand a State case to a State jurisdiction other than "from whence it came." The Court erred in remanding to the Wayne County Circuit Court. The matter was pending in the Michigan Supreme Court. Prior law on removal of suits from State courts initiates from the Judicial Code of 1911, c. 231, 36 Stat. 1087, entitled "Act to codify, revise and amend the laws relating to the judiciary" provided in section 28, as amended, as follows:

" * * * Whenever any cause shall be removed from any State court into any district court of the United States, and the district court shall decide that the cause was improperly removed,

and order the same to be remanded to the State court from whence it came. * * * " (emphasis added)

Plaintiff-appellant's request for Stay of proceedings as to the state action should be granted forthwith. Plaintiff-appellant filed a non-identical complaint in the Federal court, with separable controversies. However, the charges of fraud, concealment and deception as to attorney malpractice are sl closely linked with charges of conspiracy and obstructing justice that Plaintiff-appellant can make no distinction between the separable controversies, because she is not a lawyer and therefore, not an expert.

Furthermore, the Michigan Supreme Court members refused to act on Petitioner-Cramer's motion to reverse, void or correct defective decision, as reported at 401 Mich 252.

Moreover, Plaintiff-appellant incorporates herein as though fully set forth her Objections to motion to dismiss appeal. She is in the process of preparing her Brief on appeal where these matters will be pointed out to the Court herein.

The Order entered in the United States District Court on January 17, 1980, remands to the wrong State jurisdiction; "removal" was sought pursuant to section 1443, from the State case as pending in the Michigan Supreme Court, Docket No. 62249. In the State case, there were no such allegations of conspiracy and obstructing justice, and therefore, the grounds in the federal action are not identical with the State action, and the Michigan Supreme Court members are included as defendants in said non-identical complaint. The Wayne Circuit Court would have no jurisdiction on said remand. Certainly, the Wayne County Circuit Court would

have no jurisdiction on joinder of the federal action where the said Complaint for Declaratory Judgment as filed in the United States District Court involves the Michigan Supreme Court decision as reported at 401 Mich 252.

Granting of Plaintiff's stay of proceedings in the State courts while the matter is pending on appeal in the United States Court of Appeals is necessary and additional inference to 28 USC 1447 (d) (involving 401 Mich 252) and to permit Plaintiff-appellant to appeal from the Order of the United States District Court in whole.

Respectfully submitted,
Dated: /s/ Virginia Cramer,
Apr 2, 1980 Plaintiff-appellant in pro per

Entered April 3, 1980
Michigan Supreme Court - No. 62249
Dated April 8, 1980

COA: 78-3794
LC: 78-822-879-CZ

On Order of the Court, plaintiff-appellant's motion for rehearing is DENIED because GCR 1963, 864.4, provides for filing of such motion only in opinion cases. Plaintiff-appellant's motion is treated as a motion for reconsideration of this Court's order dated May 3, 1979, and the motion is DENIED, because it does not appear to the Court that said order was entered erroneously.

The motion by the attorney for plaintiff-appellant for entry of an order allowing the attorney for plaintiff-appellant to withdraw is DENIED as moot.

/s/ Corbin R. Davis, Deputy Clerk
Michigan Supreme Court,
Lansing, Michigan

Entered May 3, 1979
Michigan Supreme Court No. 62249

COA: 78-3794
LC: 78-822-879-CZ

On order of the Court, plaintiff-appellant's motions for immediate consideration, for reconsideration, to reverse, and for oral argument are considered, and they are DENIED, because it does not appear that the questions presented should be reviewed by this Court.

The motions for actual attorney fees and for actual costs also are DENIED.

/s/ Corbin R. Davis, Deputy Clerk
Michigan Supreme Court
Lansing, Michigan

Filed April 14, 1980 No. 80-1118
United States Court of Appeals

MOTION TO EXTEND TIME FOR FILING OF PLAINTIFF-APPELLANT'S BRIEF

COMES NOW the Plaintiff-appellant in pro per, and moves the Court to grant extension of time until MAY 20, 1980, within which to file her Brief on appeal. In support of the motion, Plaintiff-appellant states that the elements, conditions and occurrances have rendered it impossible for her to prepare the brief for filing on/or before April 20, 1980, in accordance with the Office of the Clerk's letter dated March 11, 1980, and are as follows:

1. Additional and extra time spent in preparation of pleadings for filing in Wayne County Circuit Court, State of Michigan, due to harassment tactics imposed by

attorneys John P. Jacobs and Thomas M. O'Leary, representing Co-Defendant Allen Counard, in this same case; and where Plaintiff-appellant herein had to recover the Federal District Court original record from the Wayne County Circuit Court, for proper transmitting to the United States Court of Appeals, Sixth Circuit.

2. Additional and extra time spent in preparation of "Motion for Stay Pending Review" filed in the United States Court of Appeals, on March 17, 1980, and which is still pending.

3. Additional and extra time spent in preparation of "OBJECTIONS TO MOTION TO DISMISS APPEAL" and "PLAINTIFF'S REPLY IN OPPOSITION TO OBJECTIONS OF DEFENDANT-APPELLEE COUNARD TO PLAINTIFF'S MOTION FOR STAY PENDING REVIEW" due to harassment tactics imposed by attorneys John P. Jacobs and Thomas M. O'Leary, representing Co-Defendant Allen Counard, in this same case.

4. Failing eyesight of Plaintiff-Appellant, requiring periodic treatment, due to small print in research materials and law books, and while acting in her own representation and proper person because of the improbability and/or the impossibility of obtaining the professional services of a good lawyer, even though Plaintiff-appellant is able to pay for said legal services.

5. Defective physical health of Plaintiff-appellant caused by the strain endured in this case for a period of approximately twelve (12) years, and that Plaintiff-appellant is now sixty-one (61) years of age.

6. That additional and extra time was necessarily spent to line-up a special

printer (for printing of Brief) for necessary security reasons and so that said printer would be unknown to Plaintiff-appellant's opposition, in this case.

7. Illness and inclement weather which, at different times, delayed and/or prevented Plaintiff-appellant in making trips to a law library for researching the law in particular law books which your plaintiff-appellant does not have in her possession on her premises.

This motion is pursuant to FRAP Rule 31(a) and the Office of the Clerk's letter dated March 11, 1980, copy of which is attached hereto.

WHERE for the reasons above-stated and by supporting affidavit below, Plaintiff-appellant finds it essential to make this request to extend time for filing of Plaintiff-appellant's Brief on Appeal 30 days from April 20, 1980, or to May 20, 1980, and Plaintiff-appellant prays that the Court will grant said extension of time.

Dated: /s/ Virginia Cramer,
Apr 10,1980 Plaintiff-appellant in pro per

No. 80-1118
EXTENSION TO 5/20/80 GRANTED
Entered by the Clerk pursuant to Rule 4F
Sixth Cir. Rules, /s/ J. P. Hehman, Clerk.

Filed April 25, 1980 No. 80-1118
United States Court of Appeals
Sixth Circuit

MOTION TO DISMISS APPEAL

Appellee, the Federal Home Loan Bank Board,

its director and officers, by and through James K. Robinson, United States Attorney, and Samuel J. Behringer, Jr., Assistant United States attorney, respectfully move the Court to dismiss this appeal from the order of the United States District Court of the Eastern District of Michigan, Southern Division entered on January 17, 1980, taken by appellant by notice of appeal filed February 8, 1980, upon the ground that the appeal is not within the jurisdiction of the Court.

Respectfully submitted,
JAMES K. ROBINSON
United States Attorney
/s/ SAMUEL J. BEHRINGER, JR.
(P23751)
Undated Assitant United States Attorney

BRIEF IN SUPPORT OF MOTION TO DISMISS APPEAL

The Federal Home Loan Bank and Board, appellee, by and through its undersigned attorneys, submits this brief in support of its instant motion.

An assertion of jurisdiction in the federal court system was unsuccessfully attempted by the appellant by initiating a removal from the Michigan Supreme Court to the United States District Court for the Eastern District of Michigan. Accordingly, an order of dismissal was entered by the Honorable Anna Diggs Taylor in the Federal District Court on January 17, 1980. Appellant is presently attempting to invoke the jurisdiction of the United States Court of Appeals by lodging an appeal from that Order of Dismissal. Appellee herein asserts that the Court of Appeals has no jurisdiction to entertain an appeal where the record establishes a want of jurisdiction in district court. Taylor v Criminal District Court No. 4, 431 F2d 710 (5th Circ. 1970).

Statement of the Proceedings

This instant action requires attention to the proceedings in two different court systems.

A. STATE COURT PROCEEDINGS

In 1963 Cramer purchased a home with funds loaned by the Metropolitan Federal Savings and Loan Association and gave a mortgage to Metropolitan to secure the loan. (Plaintiff's Preamble paragraph 1, page 2). A dispute subsequently developed between Cramer and Metropolitan which caused Metropolitan to commence proceedings to foreclose the mortgage given by Cramer by advertisement in May of 1968. (Plaintiff's Preamble paragraphs 2-10, pages 2-5).

I. WAYNE COUNTY CIRCUIT COURT CIVIL ACTION NO. 115-702 (sic, 115-792)

Cramer disputed the propriety of the foreclosure and eventually commenced a civil action in the Wayne County Circuit Court of the State of Michigan to, among other things, enjoin the foreclosure sale. (Plaintiff's Preamble, paragraph 33). The action was designated as Civil Action No. 115-792 and was styled:

VIRGINIA CRAMER, Plaintiff

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation
Defendant.

This pleading did not include the Federal Home Loan Bank Board or any of its directors or officials as party-defendants. At this point in time Cramer was represented by counsel.

In subsequent proceedings in that court, a restraining order which had been issued was dissolved, a finding of default was made, and Metropolitan was permitted to proceed to sale. (Plaintiff's Preamble, paragraphs 34 and 36, pages 9-10). After subsequent proceedings, a Judgment adverse to Cramer was entered which she appealed to the Michigan Court of Appeals. (Plaintiff's Preamble, paragraphs 38-42, pages 10-11).

The Michigan Court of Appeals reversed the Circuit Court and remanded the cause back to the latter court for further proceedings. At this point, Cramer received permission from the court to file an Amended Complaint styled as:

VIRGINIA CRAMER, Plaintiff,

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, James I. McClintock, Chairman of Board of Directors, Roger C. Richards, President John C. Denyer, Asst Vice-President JOHN DOE, Members of the Board of Directors RICHARD ROE, Vice-President and ALL OTHER OFFICERS OF METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, Defendants

This Amended Complaint did not include the Federal Home Loan Bank Board or any of its directors or officials as named party-defendants. It also did not include any members of the Michigan Supreme Court or the individually named attorneys.

In the course of proceedings upon the Amended Complaint, Cramer availed herself of discovery and participation in pretrial proceedings. (Plaintiff's Preamble paragraphs 44-45, pages 11-12). She was now represented by new counsel, Allen Counard.

Cross motions for summary judgment came to be heard. On February 7, 1972 the Circuit Court ruled against Cramer and entered judgment in favor of Metropolitan of all counts.

A second appeal was lodged with the Michigan Court of Appeals from the February 7, 1972 determination which resulted in an affirmation of the Circuit Court's decision on all counts except Count IV. The matter was therefor remanded back to the Circuit Court for further proceedings upon Count IV. (Plaintiff's Preamble paragraphs 54, page 14).

Cramer initiated her third appeal through the state court system. On October 6, 1977 the Michigan Supreme Court affirmed in favor of Metropolitan. Cramer v Metropolitan, 401 Mich 252 (1977). Two rehearing requests were denied by the Michigan Supreme Court on December 15, 1977 and February 1, 1979. (Plaintiff's Preamble paragraph 58, page 15).

Procedding in pro per, Cramer then sought certiorari from the Supreme Court of the United States on April 27, 1978. The United States Supreme Court denied her petition on June 12, 1978.

II. WAYNE COUNTY CIRCUIT COURT CIVIL ACTION NO. 78-822-879 CZ

Following the United States Supreme Court denial of her certiorari petition, Cramer initiated a second action in the Wayne County Circuit Court on July 14, 1978. It was designated as Civil Action No. 78-822-879-CZ and was styled as:

VIRGINIA CRAMER, Petitioner-Defendant
(in wrongful foreclosure action)
Petitioner-Plaintiff

VS

METROPOLITAN SAVINGS ASSOCIATION
a/k/a METROPOLITAN FEDERAL SAVINGS AND
LOAN ASSOCIATION, JAMES I. McCLINTOCK,
ROGER C. RICHARDS and JOHN C. DENYER,
Jointly, severally and individually,
Plaintiffs in wrongful foreclosure action,

Defendants.

and
McCLINTOCK DONOVAN CARSON & ROACH and
JAMES I. McCLINTOCK, MICHAEL DOELLE
and WILLIAM P. THORPE, attorneys at law,
jointly, severally & individually

Co-Defendants.

and
ABEL SELBURN, ALLEN COUNARD and
WILLIAM R. McFADDEN, attorneys at law,
jointly, severally and individually,

Co-Defendants.

This pleading did not include the Federal Home Loan Bank Board or any of its directors or officials as party-defendants. Cramer did not prevail in obtaining the relief sought in this second civil action. Appeal was again pursued through the state court system. On February 7, 1979, the Michigan Supreme Court denied Cramer leave to appeal and, on May 3, 1979, denied her motions to reconsider that denial and for other relief. (Plaintiff's Preamble paragraph 67, pages 18-19). Yet another counsel (William R. McFadden) was retained by Cramer who filed two motions on May 23, 1979 with the Michigan Supreme Court. McFadden also filed a third motion to withdraw as counsel.

B. FEDERAL DISTRICT COURT PROCEEDINGS

While Cramer awaited a disposition upon the three motions she had pending before the Michigan Supreme Court in her second civil action, she initiated a removal from the Michigan Supreme Court to the federal district court. The particular events of this removal were as follows;

I. THE REMOVAL

On July 20, 1979 Cramer, proceeding in pro per, filed a Petition for Removal of Cause from the Michigan Supreme Court to the United States District Court for the Eastern District of Michigan. It was designated by the Clerk of the Court for the United States District Court for the Eastern District of Michigan as Civil Action No. 9-72789. As presented by Cramer, the removal petition identified each of the two state circuit court civil actions by their respective circuit (115-792 and 78-822-879 CZ) and appellate court numbers. The parties were styled as:

VIRGINIA CRAMER, Petitioner-Defendant
(in wrongful foreclosure action)
Petitioner-Plaintiff,

VS

METROPOLITAN SAVINGS ASSOCIATION, a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, severally and individually, Plaintiffs in wrongful foreclosure action,
Defendants

and

McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, attorneys at law, jointly, severally & individually,
Co-Defendants

and

ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, attorney at law, jointly, severally and individually,
Co-Defendants

and

FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge
Co-Defendants

and
MICHIGAN SUPREME COURT Members, Justices Mary C. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., jointly, severally and individually,
Co-Defendants.

This is the first time in more than eleven years of litigation that either the Federal Home Loan Bank Board, the Michigan Supreme Court or any of its individual Justices were named as party-defendants to these proceedings. The files of all proceedings did not include any order permitting the joinder of these parties either prior to or after removal by either a judge in the state court system or of the federal district court.

II. COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, AND MONEY DAMAGES FOR INJURY TO PERSON AND PROPERTY AND DEMAND FOR TRIAL BY JURY.

On the same date that Cramer filed her removal petition, she also filed as part of the removed action a Complaint for Declaratory Judgment, Reversal of Michigan Supreme Court Decision, Injunctive relief and Money Damages for Injury to Person and Property and Demand for Jury Trial. This 19 page Complaint appeared incomplete in that it consisted of 68 numbered paragraphs which ended at page 19 without a clause for relief. It was styled:

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VIRGINIA CRAMER, Petitioner Plaintiff — CIVIL ACTION NO. 9-72789

VS

METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, jointly, severally and individually, Defendants	Mich Supreme Court No. 62249
and McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, attorneys at law, jointly, severally & individually, Co-Defendants	Wayne Cir Ct No. 78-822-879 CZ (Commenced 7-14-78)
and ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, attorney at law, jointly, severally and individually, Co-Defendants	Prior Action (Wayne) No. 115-792
and FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge Co-Defendants	Mich Supreme Ct No. 57215 reported at: 401 Mich 252
and MICHIGAN SUPREME COURT Members, Justices Mary S. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., jointly, severally and individually, Co-Defendants	

COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY AND DEMAND FOR TRIAL BY JURY

III. COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, (INTERVENTION) AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY.

A second complaint was also filed as part of the removed action. This complaint consisted of 35 pages and 12 numbered paragraphs. It was styled:

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION-DETROIT

VIRGINIA CRAMER, Petitioner Plaintiff	CIVIL ACTION NO. 9-72789
VS	
METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, et al Defendants	Mich S Ct No. 62249
and	Wayne Cir Ct 78-822-879 CZ
McCLINTOCK DONOVAN CARSON & ROACH et al - Co-Defendants	(Commenced 7-14-78)
and	Prior Action
ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, attorneys at law, jointly, severally and individually, Co-Defendants	(Wayne)- No. 115-792
and	Mich S Ct No. 57215 reported at: 401 Mich 252.
FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge Co-Defendants	
and	
MICHIGAN SUPREME COURT Members, Justices Mary C. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., jointly, severally and individually, Co-Defendants.	

COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF (Intervention) and MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY

This second complaint asserted, in part, that the Federal Home Loan Bank Board encouraged and allowed improper conduct by its insured and thereby purported to allege state and federal constitutional issues and conspiratorial design.

BASIS UPON WHICH SUBJECT MATTER AND PERSONAL JURISDICTION WAS LACKING IN UNITED STATES DISTRICT COURT

A. PLAINTIFF COULD NOT UNILATERALLY JOIN NEW DEFENDANTS AS PART OF THE REMOVED CASE OR SUBSEQUENT TO REMOVAL WITHOUT LEAVE FROM THE COURT.

When Cramer removed the proceedings in Wayne County Circuit Court Civil Action 78-822-879 CZ (or 115-792) to the federal district court, the removed civil action had never previously included either the Federal Home Loan Bank Board (or any of its directors or officers) or the Michigan Supreme Court or any of its Justices as party-defendants. The files of both state court actions do not include any order which granted Cramer leave from either court to join these particular parties as defendants in either action.

Rather, review of the pleadings indicates that Cramer unilaterally joined these particular parties as she drafter her removal pleadings and two post-removal complaints. The simple fact is that the Federal Home Loan Bank Board and the members of the Michigan Supreme Court were never parties to the removed action prior to the removal. The state courts never had jurisdiction over these defendants, and the Federal district court also had no jurisdiction over these same defendants.

Prior to removal, Cramer had to seek

leave from the state courts under the appropriate Michigan General Court Rules to join these new defendants. GCR 118, 204.2 and 205. She never sought such leave, it was never granted to her by any state court, and opposing counsel never so stipulated.

Subsequent to removal, Cramer could not unilaterally join these parties as defendant but is required by Federal Rules of Civil Procedure Rule 21 to seek leave to join such new parties. Spencer v Dixon, 290 F Supp(W.D. La. 1968); Perry v Snyder, 33 F.R.D. 361 (E.D. Penna. 1963). She never sought such leave from this Federal district court, it has never been granted to her and the parties have never so stipulated.

B. PLAINTIFF COULD NOT UNILATERALLY FILE TWO NEW COMPLAINTS AS PART OF THE REMOVED ACTION.

The plaintiff caused her two post-removal complaints to be designated as part of removed Civil Action 9-72789. The problem with such a tactic is that Cramer never obtained leave from the federal district court to expand the controversy posed by her removed civil action to include two new additional complaints. Whether viewed as joined or amended complaints, leave had to be obtained from the Federal district court before the two additional complaints could be filed as part of Civil Action No. 9-72789. Federal Rules of Civil Procedure Rules 15(a) and 21. Perry v Snyder, 33 F.R.D. 361 (E.D. Penn. 1963).

C. PLAINTIFF HAS NO SUBSTANTIVE RIGHT OF ACTION AGAINST THE FEDERAL HOME LOAN BANK BOARD.

The Federal Home Loan Bank Board cannot

be a party defendant pursuant to Federal Rules of Civil Procedure Rule 12 due to a lack of jurisdiction on the part of this Court over the person and subject matter and a failure to state a claim upon which relief can be granted. Three points augment this argument.

I. THE FEDERAL HOME LOAN BANK BOARD CANNOT BE SUED BY THIS PLAINTIFF.

First, the Federal Home Loan Bank Board is an independent agency in the executive branch of the Federal government. 12 U.S.C. 1437. It was created to provide at all times a flexible credit reserve for member savings institutions engaged in home mortgage lending. 12 U.S.C. 1421. Being a federal agency the rule is noted that the United States, as sovereign is immune from suit save as it consents to be sued and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit. United States v Sherwood, 312 U.S. 584, 586 (1940). Where Congress has not authorized a government entity to be sued eo nominee, the entity cannot be sued. Blackmar v Guerre, 342 U.S. 512, 517 (1951). The only express waiver of sovereign immunity which permits suit against the Federal Home Loan Bank Board allows the Bank Board to be sued only "by any Federal savings and loan associations or director or officer thereof. . . " 12 U.S.C. 1464(d)(1) 1/. Plaintiff Cramer is not such an entity or actor. The recent change in the statute 2/ has been interpreted by the courts as a clear indication by congress to limit the type of parties

1/ Prior to October 16, 1966, Section 1464(d)(1) of Title 12, U.S.C., read that "(T)he Board shall have the power to sue and be sued, complain and defend in any court of competent jurisdiction in the United States."

2/ Footnote 1, supra.

that may sue the Board to just Federal savings and loan associations and officers and directors thereof. Chase Sav. & Loan Assn. v. Federal Home Loan Bank Board, 269 F Supp 965 (ED Pa. 1967). Moreover, courts have recognized that:

> "It is clear that the amendment to 12 U.S.C.A. 1464(d)(1) indicates an intent by Congress that the Board not be liable for money damages, regardless of who the plaintiff might be. S. Rep. 1482, 89th Cong., 2d Sess., reprinted in 1966 U.S. Code Cong. & Admin. News, pp. 3532, 3541. Central Savings & Loan Assn. v Federal Home Loan Bank Board, 293 F Supp 617, 621 (S.D. Iowa 1968).

It is therefore well settled in the law that this individual plaintiff may not sue the Federal Home Loan Bank Board for any relief. Central Savings & Loan Ass'n v. Federal Home Loan Bank Board, 293 F Supp. 617 (S.D. Iowa 1968), aff'd, 422 F 2d 504 (8th Cir. 1970). Putting aside the fact that one of her two complaints is incomplete, neither complaint can state a cause of action against the Board because this court has no jurisdiction over the person and subject matter. Pursuant to Federal Rules of Civil Procedure Rule 12(b), both the complaints were properly dismissed insofar as both concern the Federal Home Loan Bank Board.

II. THE BASIS OF PLAINTIFF'S SUITS DO NOT STATE A CLAIM UPON WHICH RELIEF CAN BE BASED.

Assuming arguendo that an examination of plaintiff's two actions goes even further, it is respectfully submitted that the plaintiff's allegations against the Board do not state any claim upon which relief

can be granted.

Plaintiff's two complaints cite the Fifth and Fourteenth Amendments, 42 U.S. 1983, 1985, 1986 and 1988, 28 U.S.C. 1343, 12 U.S.C. 1461, 12 U.S.C. 1701, 15 U.S.C. 61 and 28 U.S.C. 1441 are jurisdictional basis. None of these statutes found jurisdiction in the district court. As concerns 15 U.S.C. 1, the United States and its agencies not not violate the Sherman Antitrust Act. Eastern RR Presidents Conference v Noerr Motor Freight, Inc., 365 U.S. 127 (1961); Adams v American Bar Ass'n., 400 F Supp. 219 (D.C.N.J. 1975). 12 U.S.C. 1701, et seq., only pertains to the Secretary of Housing and Urban Development which is an entirely different entity then the Federal Home Loan Bank Board. 12 U.S.C. 1461, as pointed out above, only allows the Board to be sued by Federal savings and loan associations. Savings & Loan Ass'n v Federal Home Loan Bank Board, 293 F.Supp 617, 621 (SD Iowa 1968). Cramer's civil rights jurisdictional citations (28 U.S.C. 1343 and 42 U.S.C. 1983, 1985, 1986 and 1988) also fail to meet jurisdiction in the Federal District Court because, assuming other things, the statute of limitations for bringing such an action expired.

No federal statute provides any limitation period to actions under the Federal Civil Rights Act. Therfore, "the time for filing an action under the Federal Civil Rights Act is controlled by the applicable state statute of limitations." West v Board of Education, 165 F Supp 382 (D.C. Md. 1958). Federal courts indicate that the applicable period of limitations in a civil rights action is that period which state courts would apply if the action were brought in a state court under state law. Mulligan v Schlachter, 389 F 2d 231 (6th Cir. 1968).

Under the law of the State of Michigan, civil rights actions are subject to a three (3) year statute of limitations. Krum v Sheppard, 407 F 2d 490 (6th Cir. 1967); Gordon v City of Warren, 415 F. Supp. 556 (E.D. Mich. 1976). The movant submits that if this action is viewed as being a civil rights action it is barred by the statute of limitations because the plaintiff failed to timely file suit within the provided three year period. The 19 page (Non-intervention) Complaint (which appears to be incomplete) failed to even mention the Federal Home Loan Bank Board outside of its caption. The "Intervention" Complaint complained of an alleged "premature, precipitous and fraudulent" foreclosure on May 23, 1968 (paragraph 7.28 page 23) and then subsequently complained (at paragraph 9.18 and 9.19) that the Federal Home Loan Bank Board was engaged in a conspiracy due to its Board precluded diversity jurisdiction in the federal district court. See Section C1 above. The Cramer assertion that "Federal jurisdiction is founded on the extant controversy of a civil rights question . . . the enforcement of MCLA 600.3201 et seq . . . and the U. S. Constitution, Amendments Fifth and Fourteenth . . . " (para. 1.7) was not sufficient in light of the above to vest jurisdiction in the Federal District Court. The statute of limitations had expired as to the new post-removal defendants and complaints. And, with regard to the pre-removal matters, the controversy had already been adjudicated several times.

CONCLUSION

Cramer abused the removal process and also failed to properly respect the roles of the various courts and her opposing counsel in participating in the procedural processing of this litigation. As a party-plaintiff,

Cramer had absolutely no right to remove her state court action or actions to the Federal District Court. And, after removal, Cramer had absolutely no right to unilaterally join new parties and file two new complaints as part of the removed action involving either the Board or the Members of the Michigan Supreme Court. The post-removal parties and complaints required obtaining leave from the Federal district court before the joinder and filing. The district court was therefore entirely proper in dismissing her action.

Since the record establishes a want of jurisdiction in the Federal District Court, this Court of Appeals has no jurisdiction to entertain appeal. Accordingly the entire appeal should be dismissed.

Respectfully submitted,
JAMES K. ROBINSON
United States Attorney
/s/ SAMUEL J. BEHRINGER, JR.
Undated (P23751) Assistant United States Attorney

CERTIFICATE OF SERVICE

Tjis is to certify that copies of Motion to Dismiss Appeal, Brief In Support of Motion to Dismiss Appeal and this Certificate of service were placed in government franked envelopes addressed to: Virginia Cramer, 27314 Clairview, Dearborn Heights, MI 48127; Abel J. Selburn, Attorney at Law, 407 Northland Towers West, Southfield, MI 48075; Allen J. Counard, Attorney at Law, Suite 1214, 26555 Evergreen Road, Southfield, MI 48076; McClintock, Donovan, Carson & Roach, 2150 Guardian Building, Detroit, MI 48226; Thomas M. O'Leary, Attorney at Law, 1000 Guardian Building, Detroit, Michigan 48226; Frank J. Kelly, Attorney General, George H. Weller, Assis-

tant Attorney General, 7th Floor, Law Building, 525 West Ottawa, Lansing, MI 48913; and William R. McFadden, Attorney at Law, Suite 111, 1500 N. Woodward Avenue, Birmingham, MI 4804, which were subsequently sealed and placed in a United States Postal Service mail receptacle located in or near the Federal Building and U.S. Courthouse in Detroit, Michigan on the same date that the above named pleadings were filed with this court.

JAMES K. ROBINSON
United States Attorney
/s/ SAMUEL J. BEHRINGER, JR.
(P23751) Assitant United
Undated States Attorney

EXHIBIT 1 (Letter)

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL
FRANK J. KELLEY, Attorney General
Lansing 48913
May 1, 1980

John P. Hehman, Clerk
United States Court of Appeals for the Sixth Circuit
502 Post Office and Courthouse,
Cincinnati, Ohio 45202

Re: Cramer v Metropolitan Savings et al, #80-1118

Dear Mr. Hehman:

I have received the April 23, 1980 motion and brief on behalf of the Federal Home Loan Bank Board in which the Federal Home Loan Bank Board refers to the Michigan Supreme Court in relation to Mrs. Cramer's State

Court action that Mrs. Cramer tried to remove to the federal district court.

The position of the Michigan Supreme Court is that it never was and is not now a party to the state court proceeding involving Mrs. Cramer and that it need not do anything in relation to that proceeding in any court, including the United States Court of Appeals for the Sixth Circuit.

The Michigan Supreme Court was a defendant in the original of case number 79-72789, United States District Court for the Eastern District of Michigan in which the complaint was filed on July 17, 1979, and need respond in the Sixth Circuit only to any matter involving that federal case insofar as it concerns the original action in the Eastern District of Michigan.

Sincerely,
Frank J. Kelley, Attorney General
by: /s/ George H. Weller
Assistant Attorney General
Counsel for defendant
Appellee Michigan Supreme Court
793 Law Building
525 W. Ottawa
Lansing, Michigan 48913
(517) 373-8060

CC: Mrs. Cramer
Clerk, U.S. Dist. Ct. ED Mich #972789
Assistant U.S. Attorney Behringer
Mr. Abel Selburn
Mr. William McFadden
Mr. William P. Thorpe

Filed May 6, 1980 No. 80-1118
United States Court of Appeals
for the Sixth Circuit

OBJECTIONS TO MOTION TO DISMISS APPEAL

PLAINTIFF-APPELLANT'S OBJECTIONS TO FEDERAL HOME LOAN BANK BOARD'S MOTION TO DISMISS APPEAL

Plaintiff-appellant, Virginia Cramer, in pripria persona, objects to Co-Defendant-appellee's motion to dismiss appeal, and the said motion should be rejected and denied upon the ground that the appeal is most definitely within the jurisdiction of the Court shown herein as follows:

1. That the Federal Home Loan Bank Board is an indispensable party in this case and pursuant to 28 USCA 1337, 12 USCA 1451, 1452, et seq., 12 USCA 1461, 1464, et seq., and 15 USCA 4 and 5, and that matters dealing with diversion of funds is within the scope of investigatory authority of the Federal Home Loan Bank Board, and with respect to regulations promulgated by the Federal Home Loan Bank Board having the force and effect of law and subject to judicial review. (Regulations made or promulaged by unknown persons.)

2. That the plaintiff-appellant's Complaint (one Complaint in two sections; not two Complaints) as filed in the United States District Court on July 17, 1979 (not July 20, 1979) and pursuant to Rule 3 of the Federal Rules of Civil Procedure, is and was within the jurisdiction of the United States District Court, by diversity and otherwise. See, 15 USCA 4 and 5.

3. That pursuant to Federal Rules of Civil Procedure, Rule 81 (c), Petitioner-Cramer removed the Michigan State case (Wayne Circuit Court No. 78-822-879 CZ and Michigan Supreme Court No. 62249) while it was pending in the Michigan Supreme Court jurisdiction, to the United States District Court No. 79-72789, ex parte, and also on July 17, 1979, she simultaneously filed a

non-identical new Complaint pursuant to Rule 3, FRCP.

4. The new non-identical complaint, filed pursuant to Rule 3, FRCP, added and included other parties and other causes (who and which were not a part of the State Case as "removed") and which included, among others, the Federal Home Loan Bank Board, Director and/or Official and/or Officer in Charge, and who was served with process by the United States Marshal, and service of process upon the United States Attorney, Department of Justice, by said United States Marshal, together with Summons and Complaint, on July 18, 1979.

5. That the parties added and included as Co-Defendants in the new Complaint filed pursuant to Rule 3 (and who were not parties to the "removed" State case) are as follows:

i. Abel Selburn, Attorney at law (mortgagor-Cramer's first attorney)

ii. William R. McFadden, Attorney at law (mortgagor-Cramer's third attorney)

iii. Federal Home Loan Bank Board, Director and/or Official and/or Officer in Charge,

iv. Michigan Supreme Court members, et al (7)

6. That the Federal Home Loan Bank Board, et al, never answered to the Complaint (filed pursuant to FRCP, Rule 3); that instead of answering to said Complaint, the United States Attorney's office filed only a "Motion to Dismiss Post-Removal Additional Defendants and Complaints and Remand Original Proceeding." (While "apple-polishing" to the members of the Michigan Supreme Court.)

7. That the Federal Home Loan Bank Board were not parties to the "removed" State case to the United States District Court (which was pending in the jurisdiction of the Michigan Supreme Court No. 62249 at the time of "removal".

8. That the Federal Home Loan Bank Board, et al, had no standing to motion for dismissal and remand for the reason that they were not parties to said "removed" State case-(Wayne County Circuit Court No. 78-822-879 CZ and Michigan Supreme Court No. 62249).

9. That the Federal Home Loan Bank Board et al, by their attorneys, failed to plead and defend as to the Complaint filed pursuant to Rule 3.

10. That the State rules of procedure became inoperative when the State case (Wayne County Circuit Court 78-822-879 CZ and Michigan Supreme Court No. 62249) was removed to the United States District Court pursuant to Rule 81 (c), and the Federal Rules of Civil Procedure became applicable and effective, pursuant to Rule 3, et seq., Rule 4, et seq., FRCP.

11. That the Co-Defendant-appellee-Federal Home Loan Bank Board's attorneys (specifically Samuel J. Behringer, Jr. P23751) have submitted a brief with their motion to dismiss appeal which is replete with false facts, and such conduct of Mr. Samuel J. Behringer, Jr. reflects adversely upon his fitness to practice law; that this Honorable court should exercise its authority to effect disciplinary measures and proceedings against said attorney Samuel J. Behringer, Jr. P23751, and for - misconduct detrimentally reflective against the Department of Justice, representatively; that his brief in support of motion

to dismiss appeal is intended to mislead and deceive the court; that it is obvious to your Plaintiff-appellant that Mr. Samuel J. Behringer, Jr. P23751 has probably collaborated with one or more of the attorneys for Defendant-Metropolitan Savings and Loan who have consistently and continually misled and deceived the Michigan State courts; that various and several matters as stated in said brief submitted by Mr. Samuel J. Behringer, Jr. on behalf of the Federal Home Loan Bank Board, and pertaining to the prior action between mortgagor-Virginia Cramer and mortgagee-Metropolitan, are not within the personal knowledge of said Samuel J. Behringer, Jr.; that the said Samuel J. Behringer, Jr. has failed and neglected to investigate facts and law and his pleadings are designed to deceive the court and to impose harassment tactics upon your appellant herein.

12. That the within motion to dismiss appeal by Mr. Samuel J. Behringer, Jr., on behalf of the Federal Home Loan Bank Board, should be rejected by this Honorable court.

13. That the new Complaint (one Complaint in two sections, not two Complaints) which added and included the Federal Home Loan Bank Board, filed pursuant to Rule 3 of the Federal Rules of Civil Procedure is within the jurisdiction of the federal courts (filed simultaneously with ex parte Petition for Removal of Michigan State case No. 62249 pursuant to Rule 81 (c). That the United States District Court erred in jurisdictional matters; that the Federal courts have jurisdiction pursuant to 28 USCA 1337, 28 USCA 1346 (2), 28 USCA 1343; 12 USCA 1461, 1464, et seq., 12 USCA 1452 (a), (b) (7), 12 USCA 1437 (a) (b), 12 USCA 1438 (c) (6), and by Act of Congress amendment dated May 25, 1967, Pub. L. 90-19, 81 Stat. 29, which provides that:

"Any function or authority vested in or exercisable by the Federal Home Loan Bank Board, the Chairman thereof, or the Federal Savings and Loan Insurance Corporation immediately before the enactment of this Act shall not by this section or anything therein be affected - or impaired, or subjected to any restriction or limitation to which it was not then subject." (dated May 25, 1967)

14. That your plaintiff-appellant has standing in this case since she herself, as mortgagor, has been injured by the wrongdoing of a mortgagee (Metropolitan Federal Savings and Loan) where said mortgagee claimed they are "bound by federal regulations to require "escrow" and that they are bound to do nothing with said "escrow" funds belonging to the mortgagor ; that thus, the mortgagee may not be required to voluntarily adhere to the covenant and agreement to pay taxes and insurance with the mortgagor's "escrow" funds."

15. That the aforementioned "federal regulations" are made and promulgated under the direction of the Federal Home Loan Bank Board and with respect to its functions and vested authority, the Federal Home Loan Bank Board is included in the terms "wholly owned Government corporations" and "Government corporations" whenever used. 12 USCA 1438 (6). See, 15 USCA 4 and 5.

16. That by Act of Congress enacted as (short title) "Federal Home Loan Mortgage Corporation Act" and amending section 1464 of Title 12, effective November 10, 1978, Section 1703 of Pub. L. 95-630, it is specifically authorized by Congress that the "body corporate shall be under the direction of a Board of Directors composed of the members of the Federal Home Loan Bank Board" and that the Corporation shall

have power to sue and be sued, complain and defend, in any State, Federal, or other court, pursuant to 12 USCA 1452 (a) and (b) (7).

17. That prior to re-organization enactments by Congress, dated October 16, 1966, the Federal Home Loan Bank Board enjoyed the status that "the Board shall have the power to sue and be sued, complain and defend in any court of competent jurisdiction in the United States" pursuant to 12 USCA 1464 (d) (1); that by amendment enacted by Congress dated May 25, 1967, Pub. L. 90-19, the functions and vested authority to sue and be sued remained the same, unaffected and unimpaired.

WHEREFORE this Honorable court must deny the Federal Home Loan Bank Board's motion to dismiss appeal on jurisdictional grounds, and specifically for the reasons that the Federal courts do, indeed, have jurisdiction.

Respectfully submitted,
/s/ Virginia Cramer, Petitioner-appellant, In Pro Per

Dated:
Apr 27, 1980

APPELLANT'S BRIEF IN SUPPORT OF OBJECTIONS TO FEDERAL HOME LOAN BANK BOARD'S MOTION TO DISMISS APPEAL

Plaintiff-appellant, Virginia Cramer, in pro per, submits this brief in support of objections to Federal Home Loan Bank Board's motion to dismiss appeal, and she states that the United States District Court erred in jurisdictional areas, and that dismissal was in error, and Plaintiff-appellant states as follows:

BACKGROUND OF FACTS

Mortgagee-Metropolitan Federal Savings

and Loan repeatedly failed and neglected to pay mortgagor-Cramer's taxes and insurance when due and mishandled mortgagor-Cramer's "escrow" funds in 1963, 1964, 1965 and 1967. Further, in the interim, mortgagee-Metropolitan required "excessive escrow" (called cushioning in the industry) which mortgagor-Cramer disputed and recalculated. Mortgagee-Metropolitan further, refused to furnish mortgagor-Cramer with receipts or copies of receipts to account for said "escrow" funds. During the 56 month period of the said mortgage, mortgagor-Cramer never failed to pay "escrow" moneys each and every month together with principal to reduce the loan indebtedness and interest thereon, in accordance with the monthly-installment payment cards as furnished by mortgagee to mortgagor. Further, mortgagor-Cramer paid well ahead of her repayment schedule by doubling and/or tripling payments of the monthly installment. The mortgagee-Metropolitan had complete and sole control as to the allocation of mortgagor's moneys, and they credited mortgagor-Cramer's "escrow" account each and every month without fail.

On or about May 10, 1968, mortgagor-Cramer disputed mortgagee's requirement for "excessive escrow" which would have been approximately double the amount which would have been needed to pay taxes and insurance for the current year of 1968, if mortgagor-Cramer had paid without questioning mortgagee. At this point in time, there were no taxes or insurance due; none were assessed, none were billed, and none were unpaid. Nothing was due; nothing was unpaid.

Also, at this point in time, there was a credit balance in mortgagor-Cramer's "escrow" account: -there was no deficiency. Further, mortgagor-Cramer complained to mortgagee-Metropolitan that they had repeatedly allowed

her taxes and insurance to become seriously delinquent in 1963, 1964, 1965 and 1967 - (nothing was paid in 1964 from mortgagor-Cramer's "escrow" funds) even though the "escrow" funds were deposited and available; and further, that Metro's current "requirements" for "escrow" funds were excessive. Mortgagor-Cramer requested that she be permitted to pay her own obligations and liabilities for taxes and insurance, - instead of paying "escrow" moneys to mortgagee-Metropolitan to mishandle.

Without any prior notice or demand, - mortgagee-Metropolitan caused to be published "Notice of Mortgage Sale" on May 23, 1968, and at which time there was a surplus credit balance in said mortgagor's "escrow" account, and according to the terms in the mortgage note the current monthly installment payment for May 1968 could be paid on/or before May 30, 1968, without penalty or late charges. Mortgagee-Metropolitan refused to credit mortagor-Cramer's current monthly installment payment on May 29, 1968, and never returned said check. Mortgagor-Cramer first learned of the mortgage foreclosure by advertisement on June 1, 1968, by the posted "Notice of Mortgage Sale." Subsequently, mortgagee-Metropolitan refused to accept any moneys from mortgagor-Cramer "on account of the foreclosure."

STATE COURT PROCEEDINGS - Civil Action No. 115-792 (Prior action)

On August 12, 1968, mortgagor-Cramer filed a Complaint, with Summons issued (without a lawyer) in the Wayne County Circuit Court, No. 115-792, and obtained an - "Order to Show Cause with Temporary Restraining Order" against the foreclosure. The defendants-Metropolitan Federal Savings and Loan were served with said Complaint, Summons and Order to Show Cause on August 12,

1968, by the Wayne County Sheriff's department. Contrary to the erroneous matters submitted in Mr. Samuel J. Behringer's brief for the Federal Home Loan Bank Board, the action designated as Civil Action No. 115792 was styled:

(Wayne CA
Virginia Cramer, Plaintiff # 115.792)
VS
METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, A United States corporation, JAMES I. McCLINTOCK Chairman, Board of Directors, ROGER C. RICHARDS President, JOHN C. DENYER Assistant Vice-President, JOHN DOE Members of the Board of Directors, RICHARD ROE Vice-President and All Other Officers of Metropolitan Federal Savings and Loan Association, Defendants

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When the parties, plaintiff and defendants, appeared for the scheduled hearing on August 16, 1968, on said "Order to Show Cause" before Wayne County Circuit Court Judge Thomas J. Murphy, the court would not allow Plaintiff-Cramer to proceed without a lawyer and yelled at her to "hire a lawyer", and the court set a continuance hearing date for August 23, 1968. On/or about August 20, 1968, Plaintiff-Cramer hired attorney-Abel Selburn who failed and neglected to file any pleadings in said case, appeared in court proceedings only once, on September 6, 1968, and where the court would not allow Plaintiff-Cramer to show her figures as to her mortgage loan and payments. The court allowed and heard only the perjured testimony of John C. Denyer and colloquy of two (2) lawyers; whereupon, the court said "go ahead with the foreclosure." On September 27, 1968, the court entered an "Order Dissolving Temporary Restraining Order" (not a judgment) which reads, in part, "and the Court having determined that Plaintiff is in default on

her mortgage" and "the Defendants are hereby permitted to proceed with their foreclosure action." No exhibits and no identifications were presented by the defendants; none were entered into the court record. Ever since then, the defendants-mortgagee's attorneys have continuously claimed that the entire matter was 'res judicata.'

A Sheriff's sale of Cramer's property was held on October 1, 1968.

In the interim, many and various other lending institutions refused to take Virginia Cramer's application for a re-mortgage to redeem on the foreclosure, for the reason that said other lending institution's policy is "not to pick-up on another's foreclosure." Also, in the interim, mortgagor-Cramer sold other property she owned, at a loss on a quick-sale, while attempting to raise enough cash-money to pay attorney fees and to redeem on the foreclosure. Subsequently, on June 5, 1969, Plaintiff-Cramer did redeem on the foreclosure by eventually having been approved by another lending institution for a re-mortgage at a higher interest rate. Further, in the interim, after attorney Abel Selburn had received $6,000.00 from Plaintiff-Cramer, she discovered in about March 1970 that the said attorney never had filed any pleadings in the case on her behalf, and that the Defendants-Metropolitan had never been served with Selburn's pleadings although attorney-Selburn had furnished copies of pleadings to Cramer claiming that they were filed in the court. Cramer fired attorney Abel Selburn and filed a grievance against him with the bar association and who helped Cramer get her money back from attorney-Abel Selburn.

In March, 1970, Plaintiff-Cramer again attempted to be heard on the case by filing

an Amended Complaint, but, again the successor Judge (where Judge Murphy was now deceased) would not allow Cramer to proceed without a lawyer. Cramer then hired, in April or May 1970, the second attorney, Allen Counard. (Contrary to Mr. Samuel Behringer's erroneous statement in his brief, there were no "cross motions" for summary judgment.) The court would not permit the Amended Complaint to be filed, and the court heard and granted a Summary Judgment on May 29, 1970, to Defendants-Metropolitan based on the "Order Dissolving Temporary Restraining Order" entered by Judge Murphy on September 27, 1968, as a finding of "default" in plaintiff's mortgage and where the defendants' attorneys claimed that the matter was "res judicata."

Contrary to Mr. Behringer's brief, the first appeal was lodged with the Michigan Court of Appeals on June 2, 1970, by attorney-Allen Counard who ignored the "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, as a "finding of default in the mortgage," and which the defendants' attorneys were claiming as "res judicata." The Michigan Court of Appeals rendered an opinion on July 22, 1971, reversing and remanding the matter; that it was not res judicata and that "Mrs. Cramer's evidence was not heard." (emphasis added) Reported at 34 Mich App 638 (1971), and which said opinion allowed the filing of the Second Amended Complaint. The Second Amended Complaint as prepared by attorney Allen Counard, on behalf of Plaintiff-Cramer, consisted of six (6) counts, as follows:

(Filed July 23, 1971) Wayne, No. 115-792

Count I - Breach of Contract
Count II - Abuse of Process
Count III - Libel and Slander

Count IV - Breach of Fiduciary Relationship
Count V - Invasion of Privacy
Count VI - Intentional Infliction of Emotional Distress

A third Wayne County Circuit Court Judge entered his "Summary" of Pre-trial Statement as "This is a suit to set aside a foreclosure," in about October 1971. Prior to that, in August 1971, an Order was entered striking defendants affirmative defenses as to their claims of "res judicata" and "adjudged in default in the terms of her mortgage," by the Order entered on September 27, 1968. Subsequently, discovery proceedings were had by both parties' attorneys, and following that, in February 1972, plaintiff-Cramer's attorney-Allen Counard motioned for Summary Judgment (there were no "cross-motions") and which was granted to the Defendants on the grounds that "except as to the amount of damages there is no genuine issue of material fact and the Defendants are entitled to judgment as a matter of law", on March 27, 1972.

Subsequently, Cramer dismissed attorney-Allen Counard and she initiated her second appeal herself in the Michigan Court of Appeals, where said court rendered an opinion (unpublished) on May 29, 1973, Docket No. 14149, affirming dismissal of five (5) of the alleged causes of action against defendants and reversing and remanding as to Count IV, breach of fiduciary duty.

Again, during the jury trial, the lower court would not permit Cramer to be heard on any matters relating to the foreclosure because, presumably, of the so-called "finding of default" by the Order entered on September 27, 1968. From a Judgment of "no cause of action" entered on September 21, 1973, Cramer lodged the third appeal

in the Michigan Court of Appeals, Docket - No. 18948, resulting in another unpublished opinion dated June 2, 1975. On June 21, 1975, Cramer, in pro per, filed her Application for Leave to Appeal in the Michigan Supreme Court, where leave was granted, and which resulted in Michigan Supreme Court decision No. 57215, dated October 6, 1977, reported at 401 Mich 252. Two (2) rehearings were denied. Filing timely, Cramer in pro per then sought certiorari in the United States Supreme Court, on April 27, 1978. The United States Supreme Court denied her Petition on June 12, 1978. The United States Supreme Court denied her Petition on June 12, 1978 (fore the reason that fraud is alleged).

WAYNE COUNTY CIRCUIT COURT - ~~Civil~~ Action No. 78-822-879 CZ

On July 14, 1978, Cramer initiated the second action, styled as:

Virginia Cramer, Plaintiff
VS
METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, severally and individually, Defendants

and
McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, attorneys at law, jointly, severally & Individually,
Co-Defendants

and
ALLEN COUNARD, attorney at law,
Co-Defendant (as amended)

On two (2) different Orders entered by two (2) different Wayne Circuit Court judges,

Cramer filed her Claim of Appeal in the Michigan Court of Appeals, in September-1978, Docket No. 78-3794, which was dismissed on the court's own motion. Upon timely filing in the Michigan Supreme Court, that court denied Cramer leave to appeal on February 7, 1979. On motions for rehearing and reconsideration, and - motion to reverse, void or correct defective decision of October 6, 1977, reported at 401 Mich 252, the Michigan Supreme Court denied same on May 3, 1979. In the interim, on/or about February 26, 1979, Cramer hired the third attorney, William R. McFadden, who filed motions on her behalf in the Michigan Supreme Court, and further, filed a motion on his own behalf to withdraw as counsel, subsequently.

In the interim while said motions were pending in the Michigan Supreme Court, Cramer proceeding in pro per, on July 17, 1979, filed her Petition for Removal of the State case, ex parte, pursuant to Rule 81 (c), FRCP, and together with all copies of the State case proceedings, in the United States District Court, styled as follows:

Virginia Cramer, Petitioner-Defendant (in wrongful foreclosure action)

Petitioner-Plaintiff

(Removed State case No. 62249)

CA # 79-72789
U.S. Dist. Ct.

VS

METROPOLITAN SAVINGS AND LOAN ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, severally and individually, Plaintiffs in wrongful foreclosure action,

Defendants

and

McCLINTOCK DONOVAN CARSON & ROACH
and JAMES I. McCLINTOCK, MICHAEL
DOELLE and WILLIAM P. THORPE,
attorneys at law, jointly, severally
& individually,

Co-Defendants

and

ALLEN COUNARD, attorney at law

Co-Defendant (as amended)

The "removal" pleadings consisted of the following:

Notice of Removal of State Case to the United States Court
Petition for Removal of Cause to the United States District Court for the Eastern District of Michigan (Southern Division-Detroit)
Notice of Hearing, Bond filed (cash) still in said U.S. District Court.
Motion for Waiver of Bond on Removal of State case
Brief in Support of Waiver of Bond on Removal of State case

FEDERAL DISTRICT COURT PROCEEDINGS--
No. 79-72789

Simultaneously, Cramer filed a new non-identical Complaint, pursuant to Rule 3, FRCP, styled as follows:

(In the U.S. District Court)

Virginia Cramer, — —
Petitioner-Plaintiff 79-72789

VS

METROPOLITAN SAVINGS ASSOCIATION
a/k/a METROPOLITAN FEDERAL SAVINGS
AND LOAN ASSOCIATION, JAMES I.
McCLINTOCK, ROGER C. RICHARDS and
JOHN C. DENYER, jointly, severally
and individually,

Defendants

and

and
McCLINTOCK DONOVAN CARSON & ROACH
and JAMES I. MCCLINTOCK, MICHAEL
DOELLE and WILLIAM P. THORPE,
Attorneys at law, jointly, severally
& individually,
Co-Defendants

and
ABEL SELBURN, ALLEN COUNARD and
WILLIAM R. McFADDEN, Attorneys at
law, jointly, severally and individually,
Co-Defendants

and
FEDERAL HOME LOAN BANK BOARD, Director
and/or Official and/or Officer in Charge,
Co-Defendants

and
MICHIGAN SUPREME COURT Members, Justices
Mary S. Coleman, Thomas Giles Kavanagh,
Charles L. Levin, John W. Fitzgerald,
James L. Ryan, Blair Moody, Jr., jointly,
severally and individually,
Co-Defendants

The initial pleadings of the new non-identical Complaint, filed pursuant to Rule 3, FRCP, in the United States District Court, consisted as follows:

Complaint for Declaratory Judgment
(Preamble and Several Counts)
Reversal of Michigan Supreme Court
decision,
Motion for Preliminary, Permanent and
Eternal Injunctive Relief & Brief
Notice of Hearing
Demand for Jury Trial - Money Damages for
Injuries to Person & Property

Petitioner-Plaintiff Virginia Cramer sought injunctive relief to restrain and enjoin the members of the Michigan Supreme Court from condoning fraud, among other things.

Petitioner-Plaintif's Complaint for

Declaratory Judgment, Reversal of Michigan Supreme Court Decision, Injunctive Relief, and Money Damages for Injuries to Person and Property, and Demand for Jury Trial, consists of the following captions:

Preamble - paragraphs 1 through 68, pages 1 through 19

1. Jurisdiction and Venue - paragraphs 1.1 through 1.10, pages 1 thru 5

2. Cause of Action and Federal Intervention paragraphs 2.1 through 2.7, pages 5 & 6

3. Wrongful foreclosure, Slander of Title, paragraphs 3.1 through 3.11, pages 6 thru 8

4. Actual Controversy - State Action Involved, paragraphs 4.1 through 4.8, pages 8 thru 10

5. Willful and Malicious Tort, paragraphs 5.1 through 5.4, pages 10 and 11

6. Fraud, Concealment and Deception - Attorney Malpractice (Selburn & Counard) paragraphs 6.1 through 6.28, pages 11 thru 18

7. Fraud, Concealment and Deception - Attorney Malpractice, McClintock Donovan Carson & Roach, Michael Doelle and William P. Thorpe, paragraphs 7.1 thru 7.36, Pages 18 thru 25

8. Conspirators - Obstructionists of Justice (Selburn, Counard and McFadden) paragraphs 8.1 thru 8.15, pages 25 thru 27

9. Actual Controversy - Federal Action Involved, Federal Home Loan Bank Board, paragraphs 9.1 through 9.25, pages 27 thru 31

10. Injunctive Relief against Michigan Supreme Court Justices, paragraphs 10.1 through 10.23, pages 31 thru 35

11. Measure of Damages, paragraphs 11.1 and 11.2, page 35

12. Prayer for Relief and Demand for Trial by Jury, paragraphs 12.1 thru 12.7, page 35

With Summons issued and copies of the above-captioned pleadings,—all of the main multiple defendants and co-defendants were personally served by the United States Marshal, including the Federal Home Loan Bank Board and with process of service, by the United States Marshal, upon the United States Attorney. Further, the Michigan State Governor and the Michigan State Attorney General were notified and furnished with copies of all pleadings mailed by Certified Mail, Return Receipt Requested. (Proofs of Service filed in original U. S. District Court record) The United States Marshal's returns of service, and the said return-receipts are filed in U. S. District Court case No. 79-72789. (See Rule 4, FRCP)

The Federal Home Loan Bank Board never answered to the Complaint. (See, Complaint, Count 9, Actual Controversy - Federal Action Involved, Federal Home Loan Bank Board, paragraphs 9.1 through 9.25, pages 27 thru 31.) Instead of answering to said Complaint, the U. S. Attorney's office, on behalf of the Federal Home Loan Bank Board, filed:

Motion to Dismiss Post-Removal Additional Defendants and Complaints and Remand Original Proceeding.

(Contrary to Mr. Samuel J. Behringer's erroneous statements regarding two complaints, Petitioner-Cramer filed one Complaint in two

sections, pursuant to Rule 3, FRCP, together with and simultaneously with her ex parte "Removal of State Case" pursuant to Rule 81 (c), FRCP.)

Pertaining to matters relevant to the Federal Home Loan Bank Board, the following pleadings were also subsequently filed, U.S.D.C. No. 79-72789:

Objections to Motion to Dismiss Post-Removal Additional Defendants and Complaints and
Objections to Motion to Remand Original Proceeding
Motion to consolidate removed action No. 62249 and Prior action No. 57215-(state case) with instant action No. 79-72789, Brief, Affidavit and Notice of Hearing
Plaintiff's Motion to void, nullify, or vacate Wayne County Circuit Court Order dated September 27, 1968, with Brief, Affidavit and Notice of Hearing
(by the court) Request for response to deft's motion to dismiss, or to remand, or judgment on the pleadings by 12-21-79 and notice of hearing set for 1-17-80 - Taylor, J.
Plaintiff's Supplemental Pleadings in opposition to Motion to Dismiss, or remand, or judgment on the pleadings; Motion and Notice of Motion for Three Judge Court; with Application for three-Judge Court and application for interlocutory preliminary injunction and temporary restraining order by single Judge pending hearing by a Three Judge Court; Brief.
Federal Deft's Combined Response to Plaintiff's Motions
Plaintiff's Opposition to Federal Deft's Combined Response to Plaintiff's Motions

In the interim, there were several motions

still pending in the Michigan Supreme Court, No. 62249, and said motions were not disposed of by the said Michigan Supreme Court until by their Order entered on April 3, 1980. (copy of which has been furnished to the United States Court of Appeals)

Thus, jurisdiction of the State case was in the Michigan Supreme Court at the time of "removal" of said State case. (Wayne) 78-822-879 CZ and Mich S.C. No. 62249.

On January 17, 1980, (prior to the disposition of pending motions in the Michigan Supreme Court, and from which said State case was "removed") the United States District Court entered an "Order of Dismissal in Part and Order of Remand in Part", the Honorable Anna Diggs Taylor, Judge, CA No. 79-72789, which reads as follows:

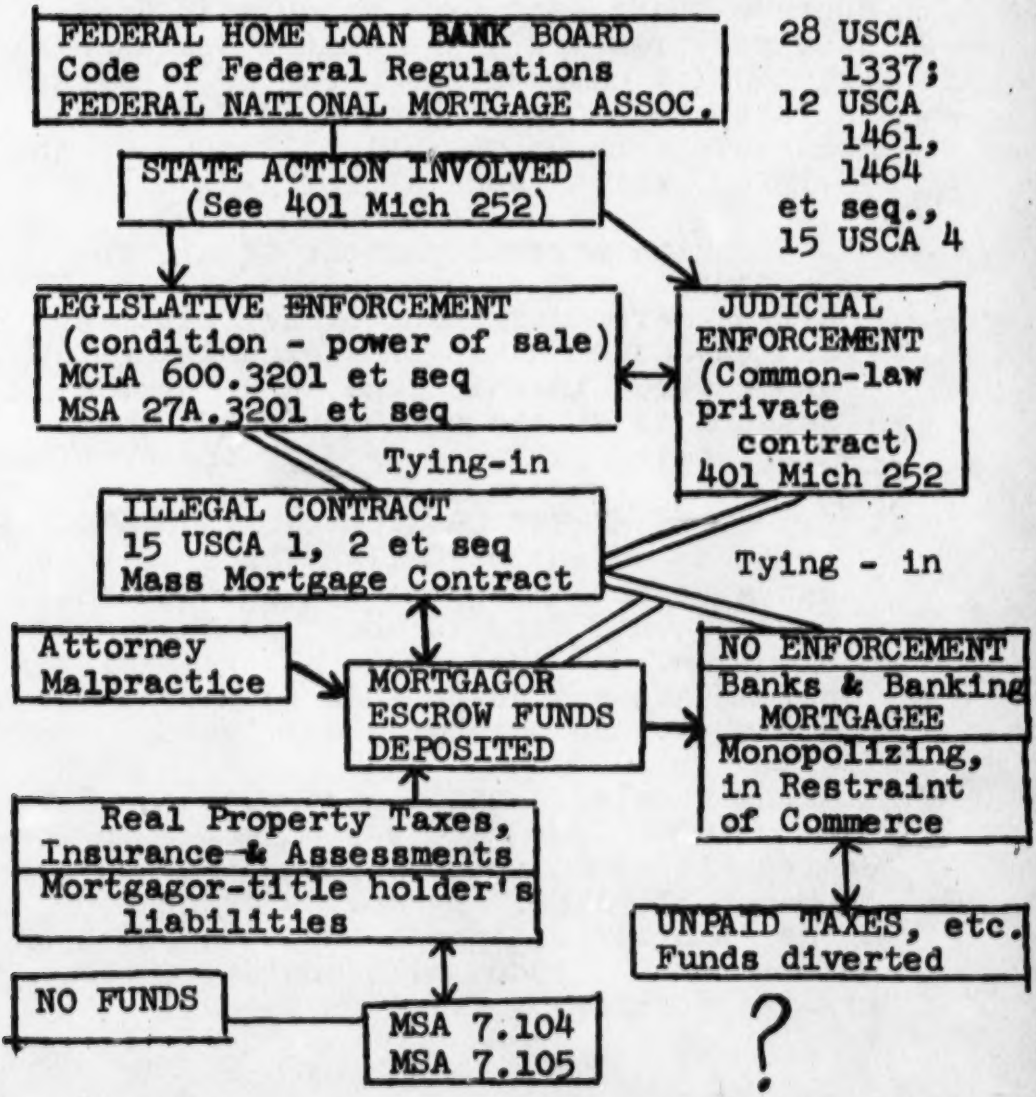
> "On the several motions of all the defendants and co-defendants herein, after hearing argument of all parties, and the Court having reviewed the files and records in this case, and for the reasons as stated on the record, the Court being fully advised in the premises,
>
> "IT IS HEREBY ORDERED AND ADJUDGED that as to co-defendant, Allen Counard, this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan, and that as to all remaining defendants and co-defendants herein this action be and hereby is dismissed."

Cramer filed "Notice of Appeal" on February 8, 1980. The case was docketed in the United States Court of Appeals, No. 80-1118, on March 11, 1980. By motion granted, Cramer's Brief on Appeal is to be filed on/or before May 20, 1980. (Extension of time granted for filing Brief on Appeal)

The following law and argument is presented in response to the Federal Home Loan Bank Board's motion to dismiss relative to jurisdiction of the Court.

SUBJECT MATTER - FEDERAL JURISDICTION

State action is involved (42 USCA 1983, 1985 et seq.) and the Michigan Supreme Court decision of October 6, 1977, reported at 401 Mich 252, Cramer vs Metropolitan Federal Savings & Loan, borders on insanity, as follows:



The decision rendered in Cramer vs Metropolitan, et al, (1977) enforces the precise conduct made unlawful by the Anti-trust laws by Act of Congress. The Federal courts have original and/or exclusive jurisdiction of the subject matter. The above chart shows the organized conspiracy against mortgagors and in violation of the laws.

The Federal Home Loan Bank Board was created by Act of Congress to provide supervisory and investigatory authority, and is a part of a "wholly owned Government corporation." Congress has effected several re-organizations involving the Federal Home Loan Bank Board. Prior to October 16, 1966, Section 1464(d)(1) of Title 12, USC., provided that:

> "(T)he Board whall have the power to sue and be sued, complain and defend in any court of competent jurisdiction in the United States." (emphasis added)

That provision did not change, and by further amendment by Act of Congress, May 25, 1967, Pub. L. 90-19, 81 Stat 29, functions of the Federal Home Loan Bank Board remained basically the same, and which said amendment provides that:

> "Any function or authority vested in or exercisable by the Federal Home Loan Bank Board, the Chairman thereof, or the Federal Savings and Loan Insurance Corporation immediately before the enactment of this Act shall not by this section or anything therein be affected or impaired, or subjected to any restriction or limitation to which it was not then subject." (dated May 25, 1967) 12 USCA 1437 (a).

Further, see 12 USCA 1451, 1452, et seq.,

which provides that:

(a) There is created the Federal Home Loan Mortgage Corporation, which shall be a body corporate and shall be under the direction of of Board of Directors composed of the members of the Federal Home Loan Bank Board, * * * . (emphasis added)

(b) The Corporation shall have power * * * (7) to sue and be sued, complain and defend, in any State, Federal, or other court; (emphasis added)

15 USCA 5. "Bringing in additional parties" provides as follows:

"Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; * * * ."

15 USCA 4. "Jurisdiction of courts; duty of United States attorneys; procedure" provides as follows:

"The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * * the court may at any time make such temporary

restraining order or prohibition as shall be deemed just in the premises."

In the instant action, Plaintiff-appellant asserts that the federal courts have jurisdiction and authority to issue orders prohibiting the Federal Home Loan Bank Board from refusing to issue cease-and-desist orders against the 5,000 or more banks and banking institutions, nationally; and at least, in the State of Michigan, where most of the said banking institutions claim that they are "bound by federal regulations to require "escrow" on all home mortgages granted. The federal regulations are made and/or promulgated under the direction of the Federal Home Loan Bank Board and, specifically, do not contain any escrow requirement as to insured or guaranteed loans.

Further, the Federal courts have held that matters dealing with diversion of funds from bank to other parties are within the scope of investigatory authority of the Federal Home Loan Bank Board. U. S. v Marchisio, C.A.N.Y. 1965, 344 F2d 653. 12 USCA 1437 (a). Further authority is granted by Act of Congress as to the functions of the Federal Home Loan Bank Board under 12 USCA-1461, 1464, et seq., to issue "cease-and-desist orders" and shall remain effective and enforceable "whenever any director or officer of an association has committed any violation of law, rule, or regulation * * * or has engaged or participated in any unsafe or unsound practice in connection with the association * * * " and further, "The Board may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the association is located, for the enforcement of any effective and out-

standing notice or order issued by the Board under subsection (d) (12 USCA 1464-(d)), and such courts shall have jurisdiction and power to order and require compliance therewith; * * * ."

In the instant action, Plaintiff-appellant charges that the Federal Home Loan Bank Board encourages the wide-spread use of illegal contracts. As public officials and with private individuals in banks and lending institutions, the Federal Home Loan Bank Board is in joint participation of violations of 15 USCA 1 and 2, et seq.

No federal statute provides any limitation period to actions under the Federal Civil Rights Act. If a State statute must be relied upon as to the action against the Federal Home Loan Bank Board, plaintiff-appellant relies on:

MCLA 600.5855; MSA 27A.5855 "Fraudulent concealment of claim or identity of person liable, discovery" which provides as follows:

> "If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim, from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim although the action would otherwise be barred by the period of limitations."

See Exhibit A, dated March 31, 1978, attached hereto, which is a letter from the Federal Home Loan Bank Board, Washington, D.C., and which, in itself, almost required an Act of Congress (through Senator Riegle),

see Exhibits B and C attached hereto, to obtain this writing from the Federal Home Loan Bank Board, and which states, in part,

> " * * * Board regulations do not contain any escrow requirement as to insured or guaranteed loans, * * * "

The various and numerous bank and banking institutions (including Metropolitan Federal Savings and Loan Association a/k/a Metropolitan Savings and Loan Association, defendants herein, who foreclosed on "escrow" funds only and accelerated the principal indebtedness) claim that payment of "escrow" funds on mortgages is mandatory, pursuant to federal regulations. The Michigan Supreme Court decision of October 6, 1977, Cramer vs Metropolitan, et al, 401 Mich 252, enforces the precise conduct made unlawful by the Antitrust laws by Act of Congress. In Janich Bros., Inc. v American Distilling Co., C.A. Cal. 1977, 570 F 2d 848, the federal court of appeals said,

> "To establish a prima facie case of attempted monopolization, a plaintiff must prove three elements:
>
> (1) specific intent to control * * * or destroy competition with respect to a part of commerce, (money)
>
> (2) predatory conduct directed to accomplishing the unlawful purpose, and
>
> (3) a dangerous probability of success."

"The phrase 'attempt to monopolize' means the employment of methods, means and practices which would, if successful, accomplish monopolization and which, though falling short, nevertheless approach so close as to create a dangerous probability of it. * * *

In determining whether there was an attempt to monopolize, all of the acts of the defendants should be viewed together." Knutson v Daily Review, Inc., C.A. Cal. 1976, 548 F 2d 795, cert den 97 S Ct 2977, 433 US 910, 53 L Ed 2d 1094.

(See chart herein, showing organized conspiracy against mortgagors and in violation of the laws.)

FEDERAL HOME LOAN BANK BOARD WITHOUT STANDING TO OBJECT TO REMOVAL OF STATE CASE

The Federal Home Loan Bank Board was never a party to the State case and, therefore, is and was without standing to object to "removal" of the State case to the Federal District Court.

—

Mortgagee-Metropolitan foreclosed by advertisement (MCLA 600.3201, et seq., MSA 27A.3201 et seq.) asserting, in effect, their federal claim or right as essential cause of action, to wit: foreclosure on mortgagor's property based upon "escrow" funds only. CFR 545.6-1 et seq. Mortgagor-Cramer has defensive merits of counterclaims against the mortgagee where mortgagee failed to pay mortgagor's taxes and insurance when due while collecting said "escrow" funds and involving a mass mortgage contract which, when read in its entirety, inhibits and prohibits a mortgagor from paying said liabilities of taxes and insurance which may become due on said mortgaged property. Mortgagee-Metropolitan further claim that they are bound to do "nothing" with said "escrow" funds belonging to the morgagors, pursuant to Title 12, sections 545.6-1 et seq.

Obviously, therefore, mortgagee's foreclosure action is founded on the laws of

the United States, to wit: federal regulations made or promulgated by the Federal Home Loan Bank Board, under 12 USCA 1461, 1464, et seq., and "removal" jurisdiction should be sustained where founded on the mortgagee's foreclosure by advertisement on "escrow" funds as cause of action. Further, mortgagor-Cramer has never had a day in court as to said foreclosure action initiated by the mortgagee. Further, due to the malpractice, negligence, fraud, concealment and deceit of the attorneys (on both sides) the document entered on September 27, 1968 by the Wayne Circuit Court (prior action 115-792 resulting in the Michigan Supreme Court decision No. 57215, dated October 6, 1977, reported at 401 Mich 252) as a "finding of default in her mortgage" consistently and continually denied mortgagor-Cramer due process of law and the opportunity to be heard in the - State case. No exhibits and no identifications were entered into the court record of the State case to support any "finding of default in her mortgage." In the almost 12 years this case has been pending in the courts, mortgagor-Cramer has never had a day in court to prove that there was no basis for the foreclosure initiated by the mortgagee, and that mortgagor-Cramer was not in default of said mortgage. Further, the court forced this mortgagor to hire attorneys, and said mortgagor-Cramer still never had a day in court as to the wrongful foreclosure and to prove that she was not in default of said mortgage.

The Federal Home Loan Bank Board is a - defendant (and properly so) in the original of case number 79-72789, United States District Court, and which said Complaint was filed on July 17, 1979, pursuant to FRCP, Rule 3. Defendant Federal Home Loan Bank Board is without standing to object to "removal" of the State case (Wayne

Circuit Court 78-822-879 CZ and Michigan Supreme Court No. 62249) since the Federal Home Loan Bank Board was never a party to the State case.

ADDING INDISPENSABLE PARTIES IN THE FEDERAL JURISDICTION PURSUANT TO RULE 3, FRCP, WAS PROPER

FILING OF ONE, NEW OR ORIGINAL COMPLAINT PURSUANT TO RULE 3, FRCP, WAS PROPER UPON FILING OF EX PARTE PETITION FOR REMOVAL OF STATE CASE PURSUANT TO RULE 81(c), FRCP.

The Federal District Courts have held that after "removal" of a State case to the federal court, technical defects in an action may be remedied. Where the Federal Home Loan Bank Board was not a party to the "removed" State case, the Federal Home Loan Bank Board cannot object to said "removal."

Adding indispensable parties to a compulsory counterclaim (or non-identical complaint) in the federal jurisdiction, pursuant to Rule 3, FRCP, was proper with the filing of ex parte petition for removal of State case, pursuant to Rule 81(c). City of New York v Evigo Corp., 20 FR Serv 927, 121 F Supp 748 (DCSDNY, 1954).

The state rules became inoperative when the litigation was removed to the district court; the Federal Rules became applicable and the requirement for filing a compulsory counterclaim became effective. TPO, Inc. v Federal Deposit Ins. Corp., 17 FR Serv 2d 631, 487 F 2d 131 (CA 3rd, 1973).

Petitioner-Cramer (Plaintiff-appellant herein) was not required to seek leave from the state courts, prior to removal of State case, to join or add new defendants. State courts have held themselves to be without jurisdiction to determine matters

involving federal antitrust laws. In Vaughn Co., Ltd. v Saul, 1977, 237 SE 2d 622, 143 GA App 74, the Georgia State appellate division held,

> "Jurisdiction to determine matters involving federal antitrust laws is vested exclusively in the federal courts and issues arising under those laws, whether raised by way of attack or defense, are beyond the jurisdiction of state courts."

After a civil action has been removed from a state court to a federal court (FRCP, Rule 81(c)), it is governed by the Federal Rules of Civil Procedure, which includes Rule 3 and 4, among others. People of State of Illinois ex rel Bowman v Home Federal Savings & Loan Ass'n., 20 FR Serv 2d 946, 621 F 2d 704 (CA 7th, 1975).

Petitioner-Cramer (Plaintiff-appellant herein) filed one new, original complaint in two sections. She did not file two complaints. This has been repeatedly explained to Mr. Samuel J. Behringer, Jr., and that "Cramer" did not have a heavy-duty stapler to fasten all the pleadings together, and that she did staple the papers together in two sections.

Regardless of how the papers were stapled together, the Federal Home Loan Bank Board did not answer to any part of the said Complaint. Process of service was made by the United States Marshal. The Federal Home Loan Bank Board, by its attorneys, only motioned the court to "dismiss and reman". Defense of failure to join indispensable parties was not properly brought before the court via motion to dismiss. Wegwart v Eagle Movers, Inc., D.C. Wis. 1977, 441 F Supp 872.

In the instant case, the Federal district court dismissed the action. For purposes of appeal, there is a difference between dismissal of complaint and dismissal of the action. Martinez v Flores, C.A. 9, 1962, 299 F 2d 888. On appeal from grant of motion to dismiss where defendant (Federal Home Loan Bank Board) filed no answer, the truth of allegations of the complaint (any complaint, i.e., one or two or compulsory counterclaim, or amended complaint) are to be assumed. Small v U.S., C.A. Del. 1964, 533 F 2d 702.

For purposes of motion to dismiss, material allegations of complaint are taken as admitted and complaint is to be liberally construed in favor of plaintiff. (Per Mr. Justice Marshall with the Chief Justice and one Justice concurring and two Justices concurring in the result). Jenkins v McKeithen, La 1969, 89 S Ct 1843, 395 U.S. 411, 23 L Ed 2d 404, rehearing denied 90 S Ct 35, 396 U.S. 809, 24 L Ed 123. The federal courts have consistently liberally contrued pro se complaints. Johnson v Marton, D.C.N.Y. 1972, 55 F.R.D. 282. Courts are cautious in dealing with motions to dismiss particularly where to grant the motion would terminate the litigation before the parties have had their day in court. Vogelstein v National Screen Service Corp., D.C. Pa. 1962, 204 F Supp 591, affirmed 310 F 2d 738, Cert den 83 S Ct 1894, 374 US 840, 10 L Ed 2d 1061, rehearing den 84 S Ct 34, 374 US 873, 11 L Ed 2d 103.

Where plaintiff is proceeding without benefit of counsel, plaintiff's allegations against the Federal Home Loan Bank Board should be viewed by the court without regard to technicalities. U.S. ex rel. Smith v Heil, D.C. Pa. 1970, 308 F Supp 1063.

In the instant case, Petitioner-Cramer's new Complaint was not the product of the petition for removal and motion to remand. Ballantine Books, Inc. v Capital Distributing Co., C.A. N.Y. 1962, 302 F 2d 17.

Petitioner-Cramer's one new Complaint (in two sections) is non-identical with the Complaint filed in the State court action. The Court of Appeals cannot affirm dismissal for failure to state calim on which relief can be granted, if under any reasonable reading complaint states claim under which relief can be granted, especially in private antitrust action which is imbued with public interest and is therefore favored. D'Ippolito v Cities Service Co., C.A.N.Y. 1967, 374 F 2d 627. It is appropriate for the court to consider matters outside of the pleadings. Pintozzi v Scott, C.A. Ill, 1970, 436 F2d 374.

> "Rule 3 provides that a civil action is commenced by filing a complaint with the court, and Rule 81(c) makes all the Rules applicable to all actions removed from state courts."
> Engelhardt v Bell & Howell Co., 5 FR Serv 2d 664, 299 F 2d 480

The United States Attorney, representing the Federal Home Loan Bank Board, has no authority to represent the Michigan Supreme Court members as defendants pertaining to the one, new, original complaint filed in the Federal District Court, No. 79-72789. (stapled in two section) Further, the members of the Michigan Supreme Court were not parties to the State court case, which Petitioner-Cramer "removed" ex parte pursuant to Rule 81 (c), FRCP.

The Michigan Supreme Court decision

rendered in Cramer vs Metropolitan, et al., dated October 6, 1977, reported at 401 Mich 252, is adjudicatory to the extent that it allows the enforcement of the precise conduct (by foreclosure) made unlawful by the Antitrust laws by Act of Congress. Further, the allegations that the Federal Home Loan Bank Board encourages the widespread use of illegal contracts, in violation of 15 USCA 1, 2, et seq., must be taken as true, where the Federal Home Loan Bank Board, by their attorneys, did not answer to the complaint. The courts have held that where an indispensable party to the action was not (technically) a party to a state court action is not an objection to removal. City of New York v Evigo Corp., 20 FR Serv 927, 121 F Supp 748 (DCSDNY, 1954).

PLAINTIFF HAS STANDING TO SUE THE FEDERAL HOME LOAN BANK BOARD

The Federal Home Loan Bank Board is the regulatory authority for the nation's federally insured savings and loans. The regulations include Code of Federal Regulations, Title 12, 545.6-1 et seq., "Loans - Real estate loans" part of which pertains to the requirement of so-called "escrow" funds, among other things. These regulations are "approved-by the Board" and where the mortgagee-banking and lending institutions, by volume, claim that they are required and/or "bound by federal regulations to require "escrow" on all home mortgages granted."

> "The question of whether a statute or administrative regulation permits maintenance of private cause of action turns on whether provision allegedly violated was designed to protect complainant from injuries of which it

complains and whether implication of such cause of action is in furtherance of provision's purpose." 12 USCA 1464, City Federal Savings and Loan Assn. v Crowley, DC Wis 1975, 393 F Supp 644. (emphasis added)

Mortgagee-Metropolitan (who foreclosed solely on the basis of their requirements for "escrow" funds) assert that they are bound to do nothing with the "escrow" funds so required. Plaintiff-appellant has standing to sue the Federal Home Loan Bank Board together with the mortgagee-Metropolitan where the said mortgagee relied on their claim and cause of action that they are required by federal regulations to require "escrow".

CONCLUSION

Petitioner-Cramer sought "removal" of the State case while it was pending in the Michigan Supreme Court (not in the Wayne County Circuit Court). Remand can be effected only to the State jurisdiction from which the State case was removed, or "from whence it came." The Wayne County Circuit Court is without jurisdiction as to said "remand," and the jurisdiction of the court must be protected in any event. The Federal Home Loan Bank Board was not a party to the State case and therefore, the "r emoval" sought cannot be objected to by the Federal Home Loan Bank Board. Petitioner-Cramer filed one, new, original complaint adding indispensable parties. The Federal Home Loan Bank Board, by their attorneys, have no authority to speak for and/or represent the Michigan Supreme Court members. Adding indispensable parties to a compulsory counterclaim (or non-identical complaint), pursuant to Rule 3, FRCP, was allowable without seeking leave of the court, and

technical defects in an action may be remedied on the court's own motion pursusna to 15 USCA 5 "Bringing in additional parties", 28 USCA 1337, especially where the federal courts have original and/or exclusive jurisdiction.

For the reasons shown and stated herein, and where the record establishes that the federal courts have original and/or exclusive jurisdiction, this Court of Appeals has jurisdiction to entertain this appeal. Accordingly, the mortion to dismiss by the Federal Home Loan Bank Board should be rejected by the court and the motion should be denied.

Respectfully submitted,
Dated: /s/ Virginia Cramer, Plaintiff-
May 2, 1980 Appellant, In Propria Persona

Filed May 6, 1980 No. 80-1118
United States Court of Appeals
Sixth Circuit

EXHIBIT A

Federal Home Loan Bank Board
Office of General Counsel
1700 G Street, N.W.
Washington, D.C. 20552
Federal Home Loan Bank System
Federal Home Loan Mortgage Corp
Federal Savings and Loan Ins. Corp

March 31, 1978

Ms. Virginia Cramer
27314 Clairview Drive
Dearborn Heights, Michigan 48127

Dear Ms. Cramer:

This is in further reference to Ms. Feldman's telephone call to you yesterday concerning your letter of March 2 to Senator

Riegle.

In your letter to Senator Riegle you asked for confirmation of the following conclusion:

> No "escrowing" or "escrow" is required on any insured or guaranteed loan, but "escrowing" is required on a loan not insured or not guaranteed, 90 percent of value.

While Board regulations do not contain any escrow requirement as to insured or guaranteed loans, the regulations of the insuring agency (FHA) or the guaranteeing agency (VA) must be examined to determine whether such a requirement exists. For your information, a copy of pertinent VA and FHA regulations is enclosed. Board regulations contain an escrow requirement, as you indicate, for loans in excess ov 80%, which of course includes the 90% loans you refer to above.

Please let us know whether we can be of further assistance.

Sincerely yours,
/s/ Jerome S. Plapinger
Associate General Counsel

Enclosure
cc: Senator Riegle (Att: Ms. Rosalie Walker)

Filed May 6, 1980 No. 80-1118
United States Court of Appeals
Sixth Circuit

EXHIBIT B

UNITED STATES SENATE
Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20510

552a

February 7, 1978

Ms. Virginia Cramer
27314 Clairview Dr.
Dearborn Heights, MI

Dear Ms. Cramer:

I am glad you took the time to contact my Detroit office regarding your questions about sections of Title XII of the Federal Code.

I contacted the Federal Home Loan Bank Board in your behalf and am enclosing a reply and some information they forwarded to me. If this information does not answer your questions satisfactorily, please do not hesitate to contact me again.

With warm regards,

Sincerely,
/s/ Don Riegle
Donald W. Riegle, Jr.
United States Senator

DWR/pw
enclosure

Filed May 6, 1980 No. 80-1118
United States Court of Appeals
Sixth Circuit

EXHIBIT C

Federal Home Loan Bank Board
1700 G Street, N.W.
Washington, D.C. 20552

Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corp

January 23, 1978

Honorable Donald Riegle
United States Senate
Washington, D. C. 20510

Dear Senator Riegle:

This is in response to an inquiry sent to the Federal Home Loan Bank Board on January 12 from your office. The inquiry was from Ms. Virginia Cramer and concerns the requirement that savings and loans escrow taxes.

The Federal Home Loan Bank Board is the regulatory agency for the nation's federally insured savings and loans. With regard to the escrow account requirements, the Bank Board's regulations affect only federally chartered savings and loans but not State-chartered federally insured institutions. The Board's regulations state that taxes must be collected by the savings and loan if the mortgage is in excess of eighty percent of the purchase price of the home: The monthly collection, which is done in conjunction with the mortgage, must approximate one-twelfth of the taxes. If the loan is for less than eighty percent, then the matter of escrowing taxes is subject to negotiation between lender and borrower.

The purpose of the regulation is to protect the savings and loan and the Federal Savings and Loan Insurance Corporation should borrowers default on their taxes. If taxes are not paid, the local government will have a first lien on the property and the lien will supercede the mortgage held by the savings and loan. Through monthly escrowing, the savings and loan can be assured that the taxes will be paid promptly and their mortgage will not be placed in jeopardy from

unpaid property taxes.

I trust this explanation is of assistance to Ms. Cramer, but should she have any further questions, please let me know.

Sincerely,
/s/ Trent R. Feldman
Assistant to the Board

Filed May 5, 1980 No. 80-1118
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

VIRGINIA CRAMER,
Plaintiff-appellant
v.
METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, ET AL.,
Defendants-Appellees

ORDER

BEFORE: WEICK, LIVELY and JONES, Circuit Judges

This cause came before the Court upon the motion of the plaintiff-appellant to stay pending appeal an order of the district court which dismissed in part and remanded in part a civil rights and attorney malpratice action removed from state court, and upon the motion of one of the defendant-appellees to dismiss the appeal from that part of the district court order remanding the claims against him to the State Court.

The Court has considered the motions and memoranda offered in support thereof, and has reviewed the record of the district court including relevant pleadings and decisions in earlier state court litigation, and concludes therefrom the appellant has

not shown entitlement to the requested stay; Reed v Rhodes, 549 F 2d 1046 (6th Cir. 1976). It is further concluded that the issues upon which the decision of the remainder of the cause depends are so unsubstantial as not to need further argument, and that the motion to dismiss is well taken. It is

Therefore ORDERED that the motion to stay be, and it hereby is, denied. It is further ORDERED that the appeal from that part of the judgment remanding the cause to the state court be, and it hereby is, dismissed; Rule 9(d)1, Rules of the Sixth Circuit. It is ORDERED that the balance of the judgment of the district court be, and it hereby is, affirmed; Rule 9(d)3, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
/s/ John P. Hehman, Clerk

Office of the Clerk
United States Court of Appeals
for the Sixth Circuit
Cincinnati, Ohio 45202

May 5, 1980

Ms. Virginia Cramer
Mr. William P. Thorpe
Mr. Samuel Behringer
Mr. Abel J. Selburn
Mr. William R. McFadden
Mr. John P. Jacobs

re: Our Case No. 80-1118
Virginia Cramer, Plaintiff-Appellant, vs Metropolitan Savings Association et al., Defendant-Appellees
District Court Number 79-27289
(sic, Number 79-72789)

Dear Counsel:

Enclosed is a copy of an order which

was entered today in the above-styled case.

Very truly yours,

John P. Hehman, Clerk

By /s/ Barbara J. Burns
(Mrs.) Barbara J. Burns
Deputy Clerk

Enclosure

Office of the Clerk
United States Court of Appeals
for the Sixth Circuit
Cincinnati, Ohio 45202

May 9, 1980

Ms. Virginia Cramer
27314 Clairview
Dearborn Heights, Michigan 48127

Re: Case No. 80-1118 - Virginia Cramer, Plaintiff-Appellant, v. Metropolitan Savings Association, et al, Defendants-Appellees, District Court Number 79-72789

Dear Ms. Cramer:

I am returning, without filing, your documents, entitled, "Objections to Motion to Dismiss Appeal". Pursuant to Rule 27 (a), Federal Rules of Appellant (sic, Appellate) Procedure, any party may file a response to a motion within 7 days after service of motion. Our records indicate the motion of appellee Federal Home Loan Bank to dismiss was served April 24, 1980.

Very truly yours,
John P. Hehman, Clerk
/s/ Yvonne C. Henderson
(Mrs.) Yvonne C. Henderson
Deputy Clerk

FROM: VIRGINIA CRAMER
27314 Clairview
Dearborn Hts., Mich 48127

Telephone: (313) 278-7286

May 14, 1980

Mr. John P. Hehman, Clerk
Office of the Clerk,
United States Court of Appeals
for the Sixth Circuit
Post Office and Court Building
Cincinnati, Ohio 45202

Re: Case No. 80-1118
Virginia Cramer, Plaintiff, v.
Metropolitan Savings Association,
et al, Defendants-Appellees,
District Court Number 79-72789

Attention: Ms. Sara Altman, Case Manager
and Ms. Yvonne C. Henderson,
Deputy Clerk

Dear Ms. Altman and Ms. Henderson:

In accordance with telephone conversations with your office, I am re-returning herewith my documents entitled "Objections to Motion to Dismiss Appeal", which are dated as having been received in your office on May 6, 1980, for filing in the court record.

Your letter of May 9, 1980, is in error regarding Rule 27 (a), and with reference to "7 days", as follows:

Pursuant to Rule 26 (a) - Computation and Extension of Time, and subparagraph 26 (c) - Additional Time After Service by Main, my response was timely filed on May 6, 1980.

The following is the method which should have been used for computing the time in the event there may have been any question:

April 24, 1980, as the date of service of Federal Home Loan Bank Board's Motion to Dismiss (however, this date is unsupported by the "Certificate of Service" filed with said pleading.) This date is not included in the computation of time of 10 days, pursuant to Rule 26 (a).

April 25, 1980, date filed in U.S. Court of Appeals, and date received by V. Cramer, appellant. First day of computation.

April 26, 1980, (Saturday) Second day of computation.

April 27, 1980, (Sunday) Third day of computation.

April 28, 1980, (Monday) Fourth day of computation.

April 29, 1980, (Tuesday) Fifth day of computation.

April 30, 1980, (Wednesday) Sixth day of computation.

May 1, 1980, (Thursday) Seventh day of computation.

May 2, 1980, (Friday) Eighth day of computation.

May 3, 1980, (Saturday) Ninth day of computation.

May 4, 1980, (Sunday) excluded as last day of computation being Sunday

May 5, 1980, (Monday) Tenth day of computation, extending to end of said day pursuant to Rule 26 (a)

May 6, 1980, (Tuesday) Response was mailed on/or before May 4, 1980, which was received by opposition on May 5th.

Therefore, even if my documents had been mailed on May 5, 1980, and received on May 6,

1980, they were timely served within the allowable 10-day period.

Further, please allow me to draw your attention to your local court rule No. 8, which provides as follows:

"Rule 8 - Motions and Motion Practice

(a) Motion to Dismiss, Lack of Jurisdiction. At any time after a notice of appeal is filed a party may file a motion to dismiss on the ground that the appeal is not within the jurisdiction of the Court. The appellant shall have ten (10) days from the date of service of the motion to respond."

Further, your attention is directed to the "Certificate of Service" attached to the Federal Home Loan Bank Board's motion to dismiss. The said Certificate of Service bears no date whatsoever to support any contention as to date of mailing.

If you will please take the time to examine said "certificate of Service" carefully, you will find no specific date whatsoever. Therefore, there is no reason for your office to believe that said "motion to dismiss" was served on April 24, 1980, as per your letter of May 9, 1980. (photocopy attached)

As I informed Ms. Altman, by telephone, this matter will be taken on appeal to the United States Supreme Court. Therefore, I am sure you will want your docket entries to be absolutely correct and proper in consideration for all parties concerned.

I greatly appreciate your concern, if applicable, and your prompt attention and cooperation in this matter.

Also, enclosed is my check in the amount of

Fifty Cents (50/100 Dollars) for which I am requesting that you send me a certified copy of the one-page list of docket entries, Case No. 80-1118, in your court records.

Thank you very much.

Very truly yours,
/s/ Virginia Cramer
Plaintiff-appellant
in pro per

Attach.
Encl.
cc: Mr. George M. Weller
Mr. William P. Thorpe
Mr. Samuel Behringer
Mr. Abel J. Selburn
Mr. William R. McFadden
Mr. John P. Jacobs

P.S. I cannot resist making the following comparative inquiry: How does it happen that attorneys are not given equal treatment when they, in fact, have submitted pleadings to the court untimely and late by several days, and late by several weeks? Need I say more?

TO THE CHIEF JUSTICE AND ALL OTHER JUSTICES OF THE UNITED STATES SUPREME COURT:

Your Petitioner, Virginia Cramer, is not an attorney, and never will be an attorney, and does not want to be an attorney.

Respectfully submitted,

Virginia Cramer

Virginia Cramer, Petitioner
In Propria Persona